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# **DRAFT CONSOLIDATED TEXT**

## **Canada-EU Comprehensive Economic and Trade Agreement**

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The EU has added its proposed chapter on Payment and Capital Movement (as sent to Canada on 15 October 2009) the placement of which would have to be decided, as well as a placeholder for a text on a Mediation Mechanism within the Dispute Settlement chapter for which the EU will propose a text shortly.

\* For these issues, structure will be reviewed as negotiations progress. These issues may take the form of separate chapters, or may include additional chapters, for instance for subjects such as movement of persons, telecommunications, e-commerce, financial services and cultural cooperation.

\*\* The placement of these issues will be reviewed as negotiations progress.

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## **Preamble**

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## CHAPTER XX

### INITIAL PROVISIONS AND GENERAL DEFINITIONS

#### Section A – General Definitions<sup>1</sup>

##### [Article X.01: Definitions of General Application

For purposes of this Agreement, unless otherwise specified:

**Commission** means the Trade Commission established under Article X.01 (Administration of the Agreement);

**Coordinators** means the Agreement Coordinators established under Article X.02 (Administration of the Agreement);

**customs duty** includes a customs or import duty and a charge of any kind imposed on or in connection with the importation of a good, including a form of surtax or surcharge in connection with that importation, but does not include a:

- (a) charge equivalent to an internal tax imposed consistently with Article III:2 of the GATT 1994, in respect of like, directly competitive or substitutable goods of the Party, or in respect of goods from which the imported good has been manufactured or produced in whole or in part;
- (b) anti-dumping or countervailing duty that is applied pursuant to a Party's domestic law;

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<sup>1</sup> The Parties agree that in the course of the negotiations and legal review certain definitions may be moved to or from specific chapters. Finalization of the definitions is subject to the closing and review of outcomes at other tables.

- (c) fee or other charge in connection with importation commensurate with the cost of services rendered; and
- (d) premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels;

**Customs Valuation Agreement** means the *WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*;

**days** means calendar days, including weekends and holidays;

**enterprise** means an entity constituted or organized under applicable law, whether or not for profit, and whether privately owned and controlled or governmentally owned and controlled, including a corporation, trust, partnership, sole proprietorship, joint venture or other association;

**existing** means in effect on the date of entry into force of this Agreement;

**GATS** means the *WTO General Agreement on Trade in Services*;

**GATT 1994** means the *WTO General Agreement on Tariffs and Trade 1994*;

**goods of a Party** means domestic products as these are understood in the GATT 1994 or such goods as the Parties may agree, and includes originating goods of that Party;

**Harmonized System (HS)** means the *Harmonized Commodity Description and Coding System*, including its General Rules of Interpretation, Section Notes, Chapter Notes and subheading notes;

**heading** means a four-digit number, or the first four digits of a number, used in the nomenclature of the Harmonized System;

**measure** includes a law, regulation, procedure, requirement or practice;

**national** means a natural person who is a citizen according to Article X.07, or is a permanent resident of a Party;

**originating** means qualifying under the rules of origin set out in Chapter X (Rules of Origin);

**person** means a natural person or an enterprise;

**person of a Party** means a national, or an enterprise of a Party;

**preferential tariff treatment** means the application of the respective duty rate under this Agreement to an originating good, pursuant to the tariff elimination schedule;

**sanitary or phytosanitary measure** means a measure referred to in Annex A, paragraph 1 of the *SPS Agreement*;

**SPS Agreement** means the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures*;

**state enterprise** means an enterprise that is owned, or controlled through ownership interests, by a Party;

**subheading** means a six-digit number, or the first six digits of a number, used in the nomenclature of the Harmonized System;

**tariff classification** means the classification of a good or material under a chapter, heading or subheading of the Harmonized System;

**tariff elimination schedule** means Annex X.1;

**TRIPS Agreement** means the *WTO Agreement on Trade-Related Aspects of Intellectual Property Rights*;

**WTO Agreement** means the *Marrakesh Agreement Establishing the World Trade*

*Organization*, done on 15 April 1994. ] [EC comment: discussions on these definitions are ongoing in the groups dealing with the substantive rules for time being]

...

## Article X-02: Country-specific Definitions

For purposes of this Agreement, unless otherwise specified:

**citizen** means, with respect to Canada, a natural person who is a citizen of Canada under Canadian legislation.

**national government** means:

- (a) with respect to Canada, the Government of Canada; and
- (b) [with respect to the EC][not applicable to EC]

**sub-national government** means:

- (a) with respect to Canada, provincial, territorial, or local governments; and
- (b) [with respect to the EC][not applicable to EC]

Unless otherwise specified, **territory** means:

- (a) [with respect to Canada, (i) the land territory, air space, internal waters and territorial sea of Canada; (ii) the exclusive economic zone of Canada, as determined by its domestic law, consistent with Part V of the *United Nations Convention on the Law of the Sea* done on 10 December 1982 (UNCLOS); and (iii) the continental shelf of Canada, as determined by its domestic law, consistent with Part VI of UNCLOS;] [EC: subject to internal discussions]

- (b) [with respect to the EU, the territories in which the Treaty on the European Union and the Treaty on the Functioning of the European Union Treaty are applied and under the conditions laid down in those Treaties. As regards those provisions concerning the tariff treatment of goods, this Agreement shall also apply to those areas of the EU customs territory not covered by the first sentence.]

## **Section B – Initial Provisions**

### **Article X.03: Establishment of the Free Trade Area**

The Parties to this Agreement, consistent with Article XXIV of the GATT 1994 and Article V of the GATS, hereby establish a free trade area.

### **Article X.04: Relation to Other Agreements**

1. The Parties affirm their existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which the Parties are party. [EC: why is reference to WTO "static" instead of "dynamic"?]
2. [CDN: In the event of any inconsistency between this Agreement and the agreements referred to in paragraph 1, this Agreement shall prevail to the extent of the inconsistency, except as otherwise provided in this Agreement.] [EC: prefers to rely on VCLT instead of having such a rule]
3. [Others to be determined.]

### **Article X.05: Extent of Obligations**

[Language on Extent of Obligations will be provided by Canada at a later date.]

EC: The Parties shall ensure that all necessary measures are taken in order to give effect to the provisions of this Agreement, including their observance at all levels of government.



**[Article X.06: Relation to Environmental and Conservation Agreements]**

In the event of an inconsistency between an obligation in this Agreement and an obligation of a Party under an agreement listed in Annex X, the latter obligation shall prevail provided that the measure taken is necessary to comply with that obligation, and is not applied in a manner that would constitute, where the same conditions prevail, arbitrary or unjustifiable discrimination or a disguised restriction on international trade.] [EC: for discussion and possible placement in environmental group]

**[Article X.07: Reference to Other Agreements]**

Where this Agreement refers to or incorporates by reference other agreements or legal instruments in whole or in part, such references include related footnotes, interpretative and explanatory notes. Except where the reference affirms existing rights, such reference also includes, as the case may be, successor agreements to which the Parties are party or amendments binding on the Parties].

**[Annex X.05: Multilateral Environmental Agreements**

- (a) The *Convention on International Trade in Endangered Species of Wild Fauna and Flora*, done at Washington on 3 March 1973, as amended on 22 June 1979.
- (b) The *Montreal Protocol on Substances that Deplete the Ozone Layer*, done at Montreal on 16 September 1987, as amended 29 June 1990, as amended 25 November 1992, as amended 17 September 1997, as amended 3 December 1999.
- (c) The *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal*, done at Basel on 22 March 1989.
- (d) The *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade*, done at Rotterdam on 10 September 1998.
- (e) The *Stockholm Convention on Persistent Organic Pollutants*, done at Stockholm on 22 May 2001.]

**Chapter [X]****National Treatment and Market Access for Goods****ARTICLE 1: OBJECTIVE**

The Parties shall progressively liberalise trade in goods over a transitional period starting from the entry into force of this Agreement in accordance with the provisions of this Agreement [EC: and in conformity with Article XXIV of the GATT 1994.]

**ARTICLE 2: SCOPE**

This Chapter applies to trade in goods of either Party, as defined in [], except as otherwise provided in this Agreement.

**[CN: Section VI – Definitions****Article X.12 Definitions**

For purposes of this Chapter [EC: the following definitions apply:]

*Advertising films and recordings:* [means] recorded visual media or audio materials, consisting essentially of images and/or sound, showing the nature or operation of goods or services offered for sale or lease by a person established or resident in the territory of a Party, provided that such materials are of a kind suitable for exhibition to prospective customers but not for broadcast to the general public, and provided that they are imported in packets that each contain no more than one copy of each film or recording and that do not form part of a larger consignment;

*Agricultural good:* [means] A product listed in Annex 1 of the WTO Agreement on Agriculture with any subsequent changes agreed in the WTO to be automatically effective for this Agreement;

*Commercial samples* [means]:

- (a) Any goods that are representative of a particular category of goods produced outside the territory of a Party and that are imported solely for the purpose of being exhibited or demonstrated to solicit orders for similar goods to be supplied outside the territory of that Party; and
- (b) Any films, charts, projectors[EC: ,] [CN: and] scale models [EC:or] [CN: and] similar items, imported solely for the purpose of illustrating a particular category of goods produced outside the territory of a Party to solicit orders for similar goods to be supplied from outside the territory of that Party.

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*Commercial samples of negligible value* [means] commercial samples having a value, individually or in the aggregate as shipped, of not more than one USD, or the equivalent amount in the currency of any of the Parties, or so marked, torn, perforated or otherwise treated such that they are unsuitable for sale or for use except as commercial samples;

*Consumed* [means]:

- (a) actually [CN: consumed] [EC: used]; or
- (b) further processed or manufactured so as to result in a substantial change in value, form or use of the good or in the production of another good;

customs duty: Any duty or charge of any kind imposed on or in connection with the importation [EC: or exportation] of a good, including any form of surtax or surcharge imposed on or in connection with such importation [EC: or exportation].

*Customs duty* : [EC: A duty on export or import of a product. It ] does not include any:

- (a) charge equivalent to an internal tax imposed consistently with Article [8] of this Agreement;
- (b) duty imposed pursuant to a Party's domestic law consistently with Chapter ... [*Trade Remedies*]
- (c) [measure applied consistently with the provisions of Article VI or Article XIX of the GATT 1994, the WTO Agreement on Implementation of Article VI of the GATT 1994, the WTO Agreement on Subsidies and Countervailing Measures, the WTO Agreement on Safeguards, Article 5 of the Agreement on Agriculture and Article 22 of the Dispute Settlement Understanding;]

**NOTE: Canada scrutiny reserve.**

- (d) fee or other charge imposed consistent with Article [10] of this Agreement.
- (e) [premium offered or collected on an imported good arising out of any tendering system in respect of the administration of quantitative import restrictions, tariff rate quotas or tariff preference levels.]

**NOTE: EC scrutiny reserve.**

*duty-free* [means] Free of customs duties;

*good imported for sports purposes* [means] A good required for use in sports contests, demonstrations or training in the territory of the Party into whose territory the good is temporarily imported;

*good intended for display or demonstration* includes the good's component parts, ancillary apparatus and accessories; [EC editorial reserve]

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*printed advertising material* [means] A good classified in Chapter 49 of the Harmonized System, including a brochure, pamphlet, leaflet, trade catalogue, yearbook published by a trade association, tourist promotional material or poster, that is:

- (a) used to promote, publicize or advertise a good or service,
- (b) essentially intended to advertise a good or service, and
- (c) supplied free of charge.]

### [EC: ARTICLE 4: CLASSIFICATION OF GOODS

The classification of goods in trade between the Parties shall be that set out in each Party's respective tariff nomenclature in conformity with the Harmonised Commodity Description and Coding System 2007 (hereinafter "HS 2007").]

**NOTE:** *Canada to propose text.*

### [CN: Article X.9 Customs Valuation

The WTO Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation Agreement) shall govern the customs valuation rules applied by the Parties to their reciprocal trade. ]

**NOTE:** *EC scrutiny reserve*

### ARTICLE 5: REDUCTION AND ELIMINATION OF CUSTOMS DUTIES ON IMPORTS

[1. Each Party shall reduce or eliminate customs duties on goods originating in either Party in accordance with the Schedules set out in Annexes .. and ... (hereinafter referred to as "the Schedules"). For the purposes of this Chapter, "originating" means originating in either Party under the rules of origin set out in Annex ...]

**NOTE:** *Scrutiny reserve Canada*

[2. For each good, the base rate of customs duties, to which the successive reductions are to be applied under paragraph 1, shall be that specified in the Schedules.]

**NOTE:** *EC to consider if paragraph 2 can be placed in chapeau to the Schedules.*

[3. If at any moment a Party reduces its applied most favoured nation customs duty rates after the date of entry into force of this Agreement, that duty rate shall apply if and for as long as it is lower than the customs duty rate calculated in accordance with that Party's Schedule.]

**NOTE:** *Scrutiny reserve Canada*

4. Following the entry into force of this Agreement, on the request of either Party, the Parties may consult to consider accelerating and broadening the scope of the elimination of customs duties on imports between the Parties. A decision by the Parties in the [*institutional body*] on the acceleration or elimination of a customs duty on a good shall supersede any duty rate or

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staging category determined pursuant to their Schedules for that good when approved by each Party in accordance with its applicable legal procedures.

### **[EC: ARTICLE X: PROHIBITION OF DRAWBACK OF, OR EXEMPTION FROM, CUSTOMS DUTIES**

1. Non originating materials used in the manufacture of products originating in the European Community or in Canada for which a proof of origin is issued or made out in accordance with the provisions of Title V shall not be subject in the European Community or in Canada to drawback of, or exemption from, customs duties of whatever kind.

2. The prohibition in paragraph 1 shall apply to any arrangement for refund, remission or non-payment, partial or complete, of customs duties or charges having an equivalent effect, applicable in the European Community or in Canada to materials used in the manufacture, where such refund, remission or non-payment applies, expressly or in effect, when products obtained from the said materials are exported and not when they are retained for home use there.

3. The exporter of products covered by a proof of origin shall be prepared to submit at any time, upon request from the customs authorities, all appropriate documents proving that no drawback has been obtained in respect of the non-originating materials used in the manufacture of the products concerned and that all customs duties or charges having equivalent effect applicable to such materials have actually been paid.

4. The provisions of paragraphs 1 to 3 shall also apply in respect of packaging within the meaning of Article 7(2), accessories, spare parts and tools within the meaning of Article 8, and products in a set within the meaning of Article 9, when such items are non-originating.

5. The provisions of paragraphs 1 to 4 shall apply only in respect of materials which are of the kind to which the Agreement applies. Furthermore, they shall not preclude the application of an export refund system for agricultural products, applicable upon export in accordance with the provisions of the Agreement.]

***NOTE: Canada proposes EC Article 14 from Rules of Origin section should be discussed here.***

### **[EC: ARTICLE 6: ELIMINATION OF CUSTOMS DUTIES ON EXPORTS**

Neither Party may maintain or institute any kind of customs duty on or in connection with the exportation or sale for export of goods to the other Party, or any measures having an equivalent effect.]

### **ARTICLE 7: STANDSTILL**

1. Upon the entry into force of this Agreement neither Party may increase any customs duty existing at entry into force, or adopt any new customs duty, on a good originating in the Parties.

[2. Notwithstanding this provision, a Party may:

- (a) modify a tariff outside this Agreement on a good for which no tariff preference is claimed under this Agreement;
- (b) increase a customs duty to the level established in its Schedule following a unilateral reduction; or
- (c) maintain or increase a customs duty as authorized by this Agreement, the Dispute Settlement Body of the WTO or any agreement under the WTO Agreement.]

**NOTE: EC scrutiny reserve on clause 2**

**[CN: Article X.4 Temporary Admission of Goods**

1. Each Party shall grant duty-free temporary admission for the following goods, regardless of their origin and regardless of whether like, directly competitive or substitutable goods are available in the territory of the Party:
  - (a) professional equipment necessary for carrying out the business activity, trade or profession of a business person qualifying for temporary entry pursuant to Chapter X (Temporary Entry);
  - (b) equipment for the press or for sound or television broadcasting and cinematographic equipment;
  - (c) goods imported for sports purposes and goods intended for display or demonstration; and
  - (d) commercial samples and advertising films and recordings;
2. A Party shall not impose a condition on the duty-free temporary admission of a good referred to in sub-paragraphs 1(a), (b) or (c), other than to require that the good:
  - (a) be imported by a national or resident of the other Party who seeks temporary entry;
  - (b) be used only by or under the personal supervision of that person in the exercise of the business activity, trade, profession or sport of that person;
  - (c) not be sold or leased while in its territory;
  - (d) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation releasable on exportation of the good;
  - (e) be capable of identification when exported;
  - (f) be exported on the departure of that person or within such other period as is reasonably related to the purpose of the temporary importation; and

- (g) be imported in no greater quantity than is reasonable for its intended use.
3. A Party shall not impose a condition on the duty-free temporary admission of a good referred to in sub-paragraph 1(d), other than to require that the good:
- (a) be imported solely for soliciting of orders for:
    - i) a good of the other Party or a non-Party, or
    - ii) a service provided from the territory of the other Party or a non-Party;
  - (b) not be sold, leased or used for anything other than exhibition or demonstration while in its territory;
  - (c) be capable of identification when exported;
  - (d) be exported within a period that is reasonably related to the purpose of the temporary importation; and
  - (e) be imported in no greater quantity than is reasonable for its intended use.
  - (f) be accompanied by a security in an amount no greater than the charges that would otherwise be owed on entry or final importation, releasable on exportation of the good.
4. Where a good is temporarily admitted duty-free under paragraph 1 and any condition a Party imposes under paragraph 2 or 3 has not been fulfilled, the Party may impose:
- (a) the customs duty and any other charge that would be owed on entry or final importation of the good; and
  - (b) any applicable criminal, civil or administrative penalties that the circumstances may warrant.
5. Each Party, at the request of the person concerned and for reasons its customs authority considers valid, shall extend the time limit for temporary admission beyond the period initially fixed.
6. Each Party shall adopt procedures providing for the expeditious release of goods admitted under this Article. Each Party shall ensure that, to the extent possible, those procedures provide that when such a good accompanies a national or resident of the other Party who is seeking temporary entry, the good is released with the entry of that national or resident.
7. Each Party shall permit a good temporarily admitted under this Article to be exported through a customs port other than that through which it was admitted.
8. Each Party shall provide that its customs authority or other competent authority refund the security to the importer or another person responsible for a good admitted under this Article and release the importer or the other person of



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liability for failure to export the good on presentation of satisfactory proof to the customs authority of the importing Party that the good has been destroyed within the original period fixed for temporary admission or any lawful extension.

9. Except as otherwise provided in this Agreement, a Party shall not:
- (a) prevent a container used in international traffic that enters its territory from the territory of the other Party to exit its territory on a route that is reasonably related to the economic and prompt departure of the container;
  - (b) require a security or impose a penalty or charge only because of any difference between the port of entry and the port of departure of a container;
  - (c) impose a condition on the release of an obligation, including a security, that it imposes in respect of the entry of a container into its territory on exiting through a particular port of departure; or
  - (d) require that the carrier bringing a vehicle or container from the territory of the other Party into its territory be the same carrier taking the container to the territory of the other Party.]

***NOTE: Reference to WCO convention. EC scrutiny reserve also on where this provision should appear.***

### **ICN: Article X.5 Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials**

Each Party shall grant duty-free entry to commercial samples of negligible value, and to printed advertising materials, imported from the territory of the other Party, regardless of their origin, but may require that:

- (a) such samples be imported solely for the solicitation of orders for:
  - i) a good of the other Party or a non-Party, or
  - ii) a service provided from the territory of the other Party or a non-Party; or
- (b) such advertising materials be imported in packets that each contain no more than one copy of each such material and that neither such materials nor packets form part of a larger consignment. ]

***NOTE: EC scrutiny reserve, also on where this provision should appear.***

### **ICN: Article X.6 Goods Re-Entered after Repair or Alteration**

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1. Except as otherwise provided in Annex X-6, a Party shall not apply a customs duty to a good, regardless of its origin, that re-enters its territory after that good has been temporarily exported from its territory to the territory of the other Party for repair or alteration, regardless of whether such repair or alteration could be performed in the territory of the Party from which the good was exported for repair or alteration.
2. A Party shall not apply a customs duty to a good, regardless of its origin, imported temporarily from the territory of the other Party for repair or alteration.
3. Paragraph 1 does not apply to a good imported in bond, into foreign trade zones, or in similar status, that is exported for repair and is not re-imported in bond, into foreign trade zones, or in similar status.
4. For the purposes of this Article, repair or alteration includes the repair or alteration of parts or pieces of a good, but does not include an operation or process that either:
  - (a) destroys the essential characteristics of a good or creates a new or commercially different good; or
  - (b) transforms an unfinished good into a finished good.]

**NOTE:** *EC scrutiny reserve also dependent on the associated tariff aspect.*

## ARTICLE 8: NATIONAL TREATMENT

1. Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of the GATT 1994[, including its Notes and Supplementary Provisions]. To this end the obligations contained in Article III of the GATT 1994[, including its Notes and Supplementary Provisions,] are incorporated into and made part of this Agreement.

**NOTE:** *Reference to Canada's proposal Article X.07 (General Definitions)*

[EC: 2. Where products are subject to regulation at the level of the Provinces of Canada ("the Provinces"), the Territories of Canada ("the Territories") or the Member States of the European Union ("the Member States"), "national treatment" shall be understood to mean that products originating in Canada and lawfully placed on the market of any one of the Member States may be placed freely on the market of any other Member State; and products originating in the EU and lawfully placed on the market of any one of the Provinces or Territories may be placed freely on the market of any other Province or Territory.

3. Paragraph 2 is without prejudice to the right of EU and Canada to make mandatory provisions for products that are uniformly applicable throughout their territory.

4. (i) Paragraph 2 is without prejudice to the right of EU and Canada to make mandatory provisions at the level of the Member States, Provinces or Territories necessary for the fulfillment of legitimate objectives such as public security and safety; public order; protection of human, animal or plant life or health; protection of the environment; consumer protection; the effectiveness of fiscal supervision; the fairness of commercial transactions; and the defence of the consumer.

(ii) Such provisions shall not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction of internal or international trade.

(iii) The right conferred by sub-paragraph (i) shall be exercised under exceptional circumstances only and shall on request by the other Party be justified, in an objective and reasoned manner in writing.

(iv) Except as otherwise provided, "legitimate objectives" do not include protection or favouring of the production of a Party, Member State, Province or Territory." **(EC new proposed text for Articles 8.2, 8.3 and 8.4)**

[CN: 2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a sub-national government, treatment no less favourable than the most favourable treatment accorded by that sub-national government to any like, directly competitive or substitutable goods, as the case may be, of the Party of which it forms a part.

3. This Article does not apply to a measure set out in Annex X.2 (Exceptions to Articles X.2 and X.7). ]

## ARTICLE 9: IMPORT AND EXPORT RESTRICTIONS

1. Except as otherwise provided in this Agreement, neither Party may adopt or maintain any prohibition or restriction on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, except in accordance with Article XI of the GATT 1994 [, including its Notes and Supplementary Provisions]. To this end Article XI of the GATT 1994[, its Notes and Supplementary Provisions] are incorporated into and made a part of this Agreement.

***NOTE: Reference to Canada's proposal Article X.07 (General Definitions)***

[CN: 2. The Parties understand that the GATT 1994 rights and obligations incorporated by paragraph 1 prohibit, in any circumstances in which any other form of restriction is prohibited, export price requirements and, except as permitted in enforcement of countervailing and antidumping orders and undertakings, import price requirements.

3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, that Party may:

- (a) limit or prohibit the importation from the territory of the other Party of a good of that non-Party; or
- (b) require as a condition of export of a good of the Party to the territory of the other Party that the good not be re-exported to the non-Party, directly or indirectly, without being consumed in the territory of the other Party.

4. In the event that a Party adopts or maintains a prohibition or restriction on the importation of a good from a non-Party, the Parties, on the request of the other

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Party, shall enter discussions with a view to avoiding undue interference with or distortion of pricing, marketing or distribution arrangements in the other Party.]

**NOTE: EC scrutiny reserve.**

[CN: 5. This Article does not apply to a measure set out in Annex X.2 (Exceptions to Articles X.2 and X.7). ]

### [CN: Section IV - Agriculture

#### **Article X-10: Agricultural Subsidies**

1. The Parties share the objective of the multilateral elimination of agricultural export subsidies and shall work together toward an agreement in the WTO to eliminate those subsidies and avoid their reintroduction in any form.
2. A Party shall not maintain, introduce or reintroduce agricultural export subsidies on an agricultural good originating in or shipped from its territory that is exported directly or indirectly to the territory of the other Party.
3. The Parties recognize that agricultural export subsidies may also have distorting effects in third-party markets.
4. Each Party shall eliminate agricultural export subsidies on agricultural goods originating in or shipped from its territory by December 31, 2013.
5. Pending the elimination of all agricultural export subsidies, if either Party adopts or maintains an agricultural export subsidy which the other Party considers to be distortive of its trade with a non-party, the Party providing the agricultural export subsidy shall, at the request of the other Party, consult with a view to avoiding such distortionary effects.
6. The Parties agree to cooperate in WTO agricultural negotiations in order to achieve a substantial reduction of production and trade distorting domestic support.
7. If either Party maintains a production and trade distorting agriculture domestic support measure which the other Party considers to be distortive of bilateral trade under this Agreement, the Party applying the measure shall, at the request of the other Party, consult with a view to avoiding such distorting effects.]

#### **[ARTICLE 10: FEES AND OTHER CHARGES**

1. Each Party shall ensure, in accordance with Article VIII of the GATT 1994, including its Notes and Supplementary Provisions, that all fees and charges of whatever character (other than customs duties and measures set out in [Article 3 a), b) and c) and d])above) imposed on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic goods or a taxation of imports for fiscal purposes.]

**NOTE: pro memoria. Inclusion of reference to EC Article 3 above. Canada scrutiny reserve.**

2. The Parties affirm that nothing in this article modifies Article VIII of GATT 1994 as it applies between them.

#### **[EC: ARTICLE 11: IMPORT LICENSING PROCEDURES**

The WTO Agreement on Import Licensing Procedures is incorporated into and made a part of this Agreement.]

**NOTE: Canada scrutiny reserve.**

#### **[EC: ARTICLE 12: STATE TRADING ENTERPRISES AND STATE MONOPOLIES**

[*pro memoria*]]

**NOTE: EC proposes covering such provisions in a separate chapter.**

#### **[EC: ARTICLE 13: REDUCTION AND ELIMINATION OF NON-TARIFF MEASURES**

1. The Parties recognise the importance of reducing and eliminating non-tariff barriers to trade in goods between them.
2. To this end, the Parties agree co-operate to reduce and eliminate barriers to trade in goods arising from differences in technical regulations, standards, conformity assessment, marking and labelling, and similar requirements, as set out in the other relevant Chapters.
3. The Parties shall implement their commitments on sector-specific non-tariff measures on goods in accordance with the commitments set out in [*annexes*]. The [*institutional body*] shall have the power to amend, add to, or delete such sector-specific commitments.]

**NOTE: To reconsider.**

#### **[EC: ARTICLE 14: GENERAL EXCEPTIONS**

1. Nothing in this Chapter prevents the taking of measures in accordance with Articles XX and XXI of the GATT 1994, its Notes and Supplementary Provisions, which are hereby incorporated into and made part of this Agreement.]

**NOTE: Reference to Canada proposal for Institutional Provisions makes this unnecessary.**

[ EC: 2. The Parties understand that before taking any measures provided for in Articles XX(i) and XX(j) of the GATT 1994, the exporting Party intending to take the measures shall supply the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. The Parties may agree on any means needed to address the situation, by means of a decision of the [*institutional body*]. If no decision is reached within 30 days,

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the exporting Party may apply measures under this Article on the exportation of the product concerned. Where exceptional and critical circumstances requiring immediate action make prior information or examination impossible, the Party intending to take the measures may apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.]

**NOTE: Canada not convinced of utility of this text.**

### [EC: ARTICLE 15: INSTITUTIONAL PROVISIONS

*[To be discussed at later stage on the basis of a joint assessment of global needs on institutional bodies]*

### [CN: Section V – Institutional Provisions

#### **Article X.11 Consultations and Committee on Trade in Goods and Rules of Origin**

1. The Parties establish a Committee on Trade in Goods and Rules of Origin, comprising representatives of each Party and headed by senior officials responsible for international trade matters of each Party.
2. The Committee shall meet on the request of a Party or the Commission to consider any matter arising under this Chapter, Chapter X (Rules of Origin), Chapter X (Customs Procedures), Chapter X (Trade Facilitation), Chapter X (Sanitary and Phytosanitary Measures), or Chapter X (Monopolies and State Enterprises).
3. The Committee's functions shall include:
  - (a) promoting trade in goods between the Parties, including through consultations on accelerating tariff elimination under this Agreement and other issues as appropriate;
  - (b) promptly addressing barriers to trade in goods between the Parties, especially those related to the application of non-tariff measures, and, if appropriate, referring such matters to the Commission for its consideration;
  - (c) recommending to the Commission any modification of or addition to this Chapter, Chapter X (Rules of Origin), Chapter X (Customs Procedures), Chapter X (Trade Facilitation), Chapter X (Sanitary and Phytosanitary Measures), Chapter X (Monopolies and State Enterprises), or any other provision of this Agreement related to the Harmonized System; and
  - (d) considering any other matter referred to it by a Party relating to the implementation and administration by the Parties of this Chapter, Chapter X (Rules of Origin), Chapter X (Customs Procedures), Chapter X (Trade

Facilitation), Chapter X (Sanitary and Phytosanitary Measures), or Chapter X (Monopolies and State Enterprises).

4. The Parties hereby establish a Sub-Committee on Agriculture that shall:
  - (a) meet within 90 days of a request by a Party;
  - (b) provide a forum for the Parties to consult on issues resulting from the implementation of this Agreement for agricultural goods;
  - (c) refer to the Committee any matter under sub-paragraph (b) on which it has been unable to reach agreement; and
  - (d) report to the Committee for its consideration any agreement reached under this paragraph.
5. On the request of a Party, the Parties shall convene a meeting of their officials responsible for customs, immigration, inspection of food and agricultural products, border inspection facilities, and regulation of transportation for the purpose of addressing issues related to movement of goods through the Parties' ports of entry. ]

#### **[EC: ARTICLE 16: SPECIAL PROVISIONS ON ADMINISTRATIVE CO-OPERATION**

1. The Parties agree that administrative co-operation is essential for the implementation and the control of the preferential treatment granted under this [Title] and underline their commitment to combat irregularities and fraud in customs and related matters.
2. Where a Party has made a finding, on the basis of objective information, of a failure to provide administrative co-operation and/or of irregularities or fraud under this [Title], the Party concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned in accordance with this Article.
3. For the purpose of this Article a failure to provide administrative co-operation shall mean, *inter alia*:
  - a) a repeated failure to respect the obligations to verify the originating status of the product(s) concerned;
  - b) a repeated refusal or undue delay in carrying out and/or communicating the results of subsequent verification of the proof of origin;
  - c) a repeated refusal or undue delay in obtaining authorisation to conduct administrative co-operation missions to verify the authenticity of documents or accuracy of information relevant to the granting of the preferential treatment in question.

For the purpose of this Article a finding of irregularities or fraud may be made, *inter alia*, where there is a rapid increase, without satisfactory explanation, in imports of goods exceeding the usual level of production and export capacity of the other Party, that is linked to objective information concerning irregularities or fraud.

4. The application of a temporary suspension shall be subject to the following conditions:

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a) The Party which has made a finding, on the basis of objective information, of a failure to provide administrative co-operation and/or of irregularities or fraud shall without undue delay notify the [institutional body] of its finding together with the objective information and enter into consultations within the [institutional body], on the basis of all relevant information and objective findings, with a view to reaching a solution acceptable to both Parties.

b) Where the Parties have entered into consultations within the [institutional body] as above and have failed to agree on an acceptable solution within 3 months following the notification, the Party concerned may temporarily suspend the relevant preferential treatment of the product(s) concerned. A temporary suspension shall be notified to the [institutional body] without undue delay.

c) Temporary suspensions under this article shall be limited to that necessary to protect the financial interests of the Party concerned. They shall not exceed a period of six months, which may be renewed. Temporary suspensions shall be notified immediately after their adoption to the [institutional body]. They shall be subject to periodic consultations within the [institutional body] in particular with a view to their termination as soon as the conditions for their application are no longer given.

5. At the same time as the notification to the [institutional body] under paragraph 4a) of this Article, the Party concerned should publish a notice to importers in its Official Journal. The notice to importers should indicate for the product concerned that there is a finding, on the basis of objective information, of a failure to provide administrative co-operation and/or of irregularities or fraud.

### [EC: ARTICLE 17: MANAGEMENT OF ADMINISTRATIVE ERRORS

In case of error by the competent authorities in the proper management of the preferential system at export, and in particular in the application of the provisions of the Protocol to the present Agreement concerning the definition of originating products and methods of administrative cooperation, where this error leads to consequences in terms of import duties, the contracting Party facing such consequences may request the [institutional body] to examine the possibilities of adopting all appropriate measures with a view to resolving the situation.]

[CN:

#### Annex X.2

#### Exceptions to Articles X.2 and X.7

#### Section I - Canadian Measures

Articles X.2 and X.7 shall not apply to:

- (a) a measure, including that measure's continuation, prompt renewal or amendment, in respect of the following:
  - i. the export of logs of all species;



- ii. the export of unprocessed fish pursuant to applicable provincial legislation;
  - iii. the importation of any goods of the prohibited provisions of tariff items 9897.00.00, 9898.00.00 and 9899.00.00 referred to in the Schedule of the *Customs Tariff* (1997, c. 36);
  - iv. Canadian excise duties on absolute alcohol used in manufacturing under the existing provisions of the *Excise Act, 2001*, 2002, c.22, as amended;
  - v. the use of ships in the coasting trade of Canada; and
  - vi. the internal sale and distribution of wine and distilled spirits or
- (b) an action by Canada authorized by the Dispute Settlement Body of the WTO in a dispute between the Parties under the WTO Agreement.]

[CN:

### **Annex X.3**

#### **Tariff Elimination**

1. As provided in the Parties' Schedules attached to this Annex, the following staging categories apply to the elimination of customs duties by each Party pursuant to Article X-3 (2): *[staging categories to be negotiated]*
2. The base rate for determining the interim staged rate of customs duty for an item shall be the most favoured nation customs duty rate applied on June 9, 2009.
3. For the purpose of the elimination of customs duties in accordance with Article X.3, interim staged rates shall be rounded down at least to the nearest tenth of a percentage point or, if the rate of duty is expressed in monetary units, at least to the nearest 0.001 of the official monetary unit of the Party.

#### **Schedule of Canada**

(TARIFF SCHEDULE ATTACHED AS SEPARATE VOLUME)

#### **Schedule of the European Union**

(TARIFF SCHEDULE ATTACHED AS SEPARATE VOLUME)]

**[CN: Annex X.6****Goods Re-Entered after Repair or Alteration**

For the following goods of HS Chapter 89 that re-enter the territory of Canada from the territory of the European Union, and are registered under the *Canada Shipping Act*, Canada may apply to the value of repair or alteration of such goods, the rate of customs duty for such goods in accordance with its Schedule to Annex X.3 (Tariff Elimination):

- 8901.10.00
- 8901.20.00
- 8901.30.00
- 8901.90.10
- 8901.90.90
- 8902.00.10
- 8904.00.00
- 8905.10.00
- 8905.20.10
- 8905.20.20
- 8905.90.10
- 8905.90.90
- 8906.10.00
- 8906.90.19
- 8906.90.90]

## CHAPTER [XX]: TRADE REMEDIES

### SECTION X: ANTI-DUMPING AND COUNTERVAILING DUTIES

#### Article 1: General Provisions

**[EC:** 1. Each Party<sup>2</sup> retains its rights and obligations arising from the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and from the WTO Agreement on Subsidies and Countervailing Measures.

2. For the purpose of this Section, origin shall be determined in accordance with the non-preferential rules of origin of the Parties. ]

**[CN:** 1. Each Party<sup>1</sup> retains its rights and obligations under the WTO Agreement with respect to the application of anti-dumping and countervailing measures.

2. The provisions of this Section shall not be subject to the Dispute Settlement provisions of this Agreement. ]

#### Article 2: Transparency

**[EC:** 1. Both Parties agree that trade remedies should be used in full compliance with the relevant WTO requirements and should be based on a fair and transparent system.

2. Both Parties shall ensure, immediately after any imposition of provisional measures and in any case before final determination is made, full and meaningful disclosure of all essential facts and considerations which form the basis for the decision to apply measures. This is without prejudice to Article 6.5 of the WTO Agreement on Implementation of Article VI of GATT 1994 and Article 12.4 of the WTO Agreement on Subsidies and Countervailing Measures. Disclosures shall be made in writing, and allow interested parties sufficient time to make their comments.

3. Provided it does not unnecessarily delay the conduct of the investigation, each interested party shall be granted the possibility to be heard in order to express their views during trade remedies investigations. ]

**[CN:** 1. The Parties agree that anti-dumping and countervailing measures should be applied in accordance with the relevant WTO requirements and pursuant to a fair and transparent process.

2. Before a final determination is made, each Party shall ensure full and meaningful disclosure of all essential facts under consideration which form the basis for the decision to

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<sup>2</sup> X

apply final measures. Each Party shall provide a timely opportunity for interested parties to see, on request, all information relevant to the presentation of their cases that is used by the authorities in arriving at their decision to apply measures, and to prepare representations on the basis of this information. Notwithstanding the obligations set out in Article 6.5 of the WTO Agreement on Implementation of Article VI of GATT 1994 and Article 12.4 of the WTO Agreement on Subsidies and Countervailing Measures, each Party shall maintain administrative procedures that allow counsel representing interested parties to obtain access, on request, to confidential information that has been placed on the record, subject to any requirements set out in the domestic law of the parties.

3. Each interested party in an anti-dumping or countervailing investigation shall be granted a full opportunity to defend its interests. ]

### **[EC: Article 3: Consideration of Public Interest and lesser Duty Rule**

1. *The complainants, importers and their representative associations, representative users and representative consumer organizations shall be given the possibility to make themselves known and to provide information, within the time limits specified in the notice of initiation of an anti-dumping or anti-subsidy investigation, as to whether the public interest calls for intervention.*
2. *Such information shall be taken into consideration by the investigating authorities and anti-dumping or countervailing measures may not be applied by a Party where an investigation carried out in conformity with the requirements of the domestic legislation of each Party clearly concludes that it is not in the public interest to apply such measures.*
3. *Should the investigation referred in paragraph 2 conclude that measures are necessary, the amount of the anti-dumping or countervailing duty shall not exceed the margin of dumping or countervailable subsidies, but it should be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry. ]*

### **[EC: Article 5: Exclusion from bilateral dispute settlement mechanism**

The provisions of this Section shall not be subject to the Dispute Settlement provisions of this Agreement. ]

## **SECTION XX: GLOBAL SAFEGUARD MEASURES**

### **Article 1: General provisions**

**[EC:** 1. Each Party retains its rights and obligations under Article XIX of GATT 1994, the WTO Agreement on Safeguards and Article 5 of the WTO Agreement on Agriculture.

2. For the purpose of this Section, origin shall be determined in accordance with the non-preferential rules of origin of the Parties. ]

**[CN:** 1. Each Party retains its rights and obligations under Article XIX of GATT 1994 and the WTO Agreement on Safeguards.]

**Comment [AO1]:** Note: Canada agrees in principle that each party should retain its rights and obligations under Article 5 of the WTO Agreement on Agriculture. However, this reference may be better placed elsewhere in the agreement.

2. The provisions of this Section shall not be subject to the Dispute Settlement provisions of this Agreement. ]

## Article 2: Transparency

[**EC**: 1. Notwithstanding Article 1, at the request of the other Party and provided the latter has a substantial interest, the Party initiating a safeguard investigation or intending to take safeguard measures shall provide immediately ad hoc written notification of all pertinent information leading to the initiation of a safeguard investigation or the imposition of global safeguard measures including on the provisional findings, where relevant. This is without prejudice to Article 3.2 of the WTO Agreement on Safeguards.

[**EC**: *Such information is without prejudice to Article 3.2 of the WTO Agreement on Safeguards and shall at least include the elements referred to in Article 12 of the WTO Safeguard agreement as well as, where relevant, the public version of the complaint lodged by the domestic industry, details on the methodology followed for the establishment of the measure and on the attribution of the injurious effects. The format prescribed by the WTO for those notifications should be applied.*]

2. When imposing safeguard measures, the Parties shall endeavour to impose them in a way that least affects bilateral trade.

3. For the purpose of paragraph 2, if one Party considers that the legal requirements are met for the imposition of definitive safeguard measures, the Party intending to apply such measures shall notify the other Party and give the possibility to hold bi-lateral consultations. If no satisfactory solution has been reached within 30 days of the notification, the importing Party may adopt the appropriate measures to remedy the problem. The possibility for consultations should also be offered to the other Party in order to exchange views on the information referred to in paragraph 1.

4. For the purposes of this Article, it is considered that a Party has a substantial interest when it is among the five largest suppliers of the imported product during the most recent three-year period of time, measured in terms of either absolute volume or value. ]

[**CN** – SEE CLARIFICATION QUESTIONS ]

## [**EC** : Article 3: Exclusion from bilateral dispute settlement mechanism

The provisions of this Section referring to WTO rights and obligations shall not be subject to the Dispute Settlement provisions of this Agreement. ]

## [Section XX: Bilateral Safeguard Clause]

**CHAPTER [XX]:**  
**TECHNICAL BARRIERS TO TRADE (TBT)**

**Article 1: Affirmation of the WTO TBT Agreement**

[EC: Further to Article [ ] (*Relation to Other Agreements*), the Parties] [CN: The Parties] affirm their [EC: existing] rights and obligations [EC: with respect to each other] under the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as the “TBT Agreement”) [CN: in respect of technical regulations, standards, and conformity assessment procedures] [EC: which is hereby incorporated into and made part of this Agreement.]

**Article 2: Scope and Definitions**

1. This Chapter applies to the preparation, adoption and application of [CN: all] technical regulations, standards and conformity assessment procedures [CN: of government bodies] [EC: as defined in the TBT Agreement] that may affect trade in goods between the Parties.

2. This Chapter does not apply to:

(a) purchasing specifications prepared by a governmental body for production or consumption requirements [CN: of that body] [EC: of governmental bodies] [EC: subject to the WTO Agreement on Government Procurement]; or

(b) sanitary and phytosanitary measures as defined in Annex A of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

3. For purposes of this Chapter, the definitions of Annex I to the TBT Agreement shall apply.

**Article 3: Joint Cooperation**

[CN: 1. The Parties shall strengthen their joint cooperation in the areas of standards, technical regulations, and conformity assessment with a view to facilitating the conduct of trade between the Parties.

2. As laid out in chapter X.x (Regulatory Cooperation), the parties shall engage in regulatory cooperation activities with a view to improving compatibility, recognition of equivalence, or convergence, to the extent appropriate, between their respective technical regulations and conformity assessment procedures. ]

[EC: 1. The Parties shall seek to identify, develop and promote trade facilitating initiatives which may include, but are not limited to:

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(a) Reinforcing regulatory cooperation through, *inter alia*, the exchange of information, experiences and data, and scientific and technical cooperation with a view to improving the quality and level of their technical regulations and making efficient use of regulatory resources, as set out in Chapter [the chapter on regulatory co-operation];

(b) Promoting and encouraging cooperation between their respective organizations, public or private, responsible for metrology, standardization, testing, market surveillance, certification and accreditation.

(c) Seeking solutions to trade barriers that may arise in areas where alignment of technical regulations and standards is difficult or impossible.

(d) Co-ordinating their positions in international trade and regulatory organisations such as WTO and UN-ECE.

2. Where either of the Parties considers that the EU or one of its Member States, or Canada or one of its Provinces, have taken a measure that is likely to create, or has created, an obstacle to trade, the Parties concerned shall hold consultations under the framework of the [institutional body] in order to attempt to find an appropriate solution in conformity with the WTO TBT Agreement.

*Note: Co-operation at the level of particular sectors may be considered.]*

[EC: 3. The Parties undertake to strengthen their co-operation in the field of technical regulations, standards, metrology, market surveillance and conformity assessment procedures with a view to increasing the harmonization, alignment and mutual understanding of their respective systems, and facilitating access to their respective markets. To this end, they may establish regulatory dialogues at both the horizontal and sectoral levels.]

### Article 4: International Standards

1. [EC: In accordance with Article 2.4 of the TBT Agreement, the Parties agree to use international standards where they exist or their completion is imminent, as the basis for their technical regulations and standards.]

2. [EC Reserve: In accordance with Article 5.4 of the TBT Agreement, the Parties agree to use international standards, guides and recommendations, as the basis for their conformity assessment procedures.]

1. [CN: Each Party shall use relevant international standards as a basis for its technical regulations in accordance with Articles 2.4 of the TBT Agreement.

2. Each Party shall use relevant international standards, guides and recommendations as a basis for its conformity assessment procedures in accordance with Article 5.4 of the TBT Agreement.]

[CN: 3. In determining whether an international standard, guide, or recommendation exists within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement, each Party shall follow, to the greatest extent possible, the principles set out in **Decisions and Recommendations adopted by the Committee since 1 January 1995**, G/TBT/1/Rev.9, 8 September 2008, Annex B (**Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and**

*Annex 3 of the Agreement*), issued by the Committee on Technical Barriers to Trade (TBT Committee).]

EC General Reserve on Article 4.3

**[CN: Article X5: Technical Regulations**

1. If a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, at the request of the other Party, explain its decision. The Parties recognize that it may be necessary to develop common views, methods and procedures to facilitate the use of equivalency.

EC Reserve - The EC will consider a possible counterproposal

2. At the request of a Party that has an interest in developing a technical regulation similar to that of the other Party, the other Party shall provide, to the extent practicable, relevant information, studies, or other documents, except for confidential information, on which it has relied in the development of the technical regulation. The Parties recognize that it may be necessary to agree on the scope of a specific request.]

EC Scrutiny Reserve

**Article 6: Conformity Assessment**

[CN: 1. If a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision.

2. Each Party shall accredit, approve, designate, notify, license or otherwise recognize conformity assessment bodies in the territory of the other Party on terms no less favourable than those accorded to conformity assessment bodies in its territory.

3. Further to paragraph 2, a Party shall not require conformity assessment bodies in the territory of the other Party to establish a legal or physical presence in its own territory as a pre-condition to accrediting, approving, designating, notifying, licensing or otherwise recognizing said bodies.]

[CN: **Article X6.4:** *We will need to include a provision on the role of accreditation in establishing technical competence of conformity assessment bodies.*]

[5. Further to Article X.3.1 the Parties agree to cooperate by:

a) encouraging their conformity assessment bodies to participate in cooperation arrangements that promote the acceptance of conformity assessment results; and

b) encouraging their respective accreditation bodies to participate in cooperation arrangements or agreements.]

*Note: The EC would like to further discuss the placement of Article 6.5*



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[EC: 6. The Agreement on mutual recognition between the European Community and Canada, signed in London on 14 May 1998 (“the MRA”), is hereby incorporated into and made part of this Agreement as a Protocol thereto. The [institutional body] shall assume the responsibilities of the Joint Committee referred to in Article XI of the MRA.]

**[CN: Article X.7: Regulatory Impact Assessment – We will need to include text on Parties’ regulatory impact assessment policies and the exchange of information.]**

### **Article 8: Transparency**

1. Each Party shall ensure that transparency procedures regarding the development of technical regulations and conformity assessment procedures allow interested parties to participate at an early appropriate stage when amendments can still be introduced and comments taken into account, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. Where a consultation process on the development of technical regulations and or conformity assessment procedures is open to the public, each Party shall permit persons of the other Party to participate on terms no less favourable than those accorded to its own persons.

#### EC Scrutiny Reserve

[CN: 2. Each Party shall recommend to standardization bodies in its territory that they observe paragraph 1 with respect to their consultation processes for the development of standards and voluntary conformity assessment procedures.]

[CN: 3. Each Party shall transmit electronically to the other Party’s contact point, established under Article 10 of the TBT Agreement at the same time it submits its notification to the WTO Central Registry of Notifications in accordance with the TBT Agreement:

(a) its proposed technical regulations and conformity assessment procedures, including those that are in accordance with the technical content of the relevant international standards and that may have an effect on trade; and

(b) its technical regulations and conformity assessment procedures adopted to address urgent problems of safety, health, environmental protection or national security arising or threatening to arise.]

[CN: 4. The transmission of technical regulations and conformity assessment procedures made pursuant to paragraphs 3 shall include an electronic link to, or a copy of, the full text of the document.]

[CN: 5. Further to subparagraph 3(a), each Party shall allow a period of at least 60 days following transmission of proposed technical regulations and conformity assessment procedures for the public and the other Party to provide written comments. A Party shall give positive consideration to a reasonable request for extending the comment period.]

[CN: 6. Each Party shall publish or otherwise make publicly available, in print or electronically, its responses or a summary of its responses, to significant comments it receives, no later than the date it publishes the final technical regulation or conformity assessment procedure.]

[CN: 7. Each Party shall, upon request of the other Party, provide information regarding the objectives of, and rationale for, a technical regulation or conformity assessment procedure, that the Party has adopted or is proposing to adopt.]

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[CN: 8. A Party shall give positive consideration to a reasonable request from the other Party, received prior to the end of the comment period following the transmission of a proposed technical regulation, to establish or extend the period of time between the adoption of the technical regulation and the day upon which it is applicable, except where such delay would be ineffective in fulfilling the legitimate objectives pursued.]

9 Each Party shall ensure that its adopted technical regulations and conformity assessment procedures are publicly available on official websites.

EC Scrutiny Reserve

[10. Where a Party detains at a port of entry a good imported from the territory of the other Party on the ground that the good has failed to comply with a technical regulation, it shall [CN: immediately] [EC: without undue delay] notify the importer of the reasons for the detention of the good.]

EC proposes to place paragraph 10 in the trade facilitation chapter

### **[EC: Article 9: Marking and Labelling]**

1. The Parties note the provision of paragraph 1 of Annex 1 of the TBT Agreement, that a technical regulation may include or deal exclusively with marking or labelling requirements, and agree that where their technical regulations contain mandatory marking or labelling, they will observe the principles of Article 2.2 of the TBT Agreement, that technical regulations shall not be prepared with a view to, or with the effect of, creating unnecessary obstacles to international trade, and shall not be more trade restrictive than necessary to fulfil a legitimate objective.

2. In particular, the Parties agree that where a Party requires mandatory marking or labelling of products:

- (a) the Party shall endeavour to minimise its requirements for marking or labelling other than marking or labelling relevant to consumers or users of the product. Where labelling for other purposes, for example, for fiscal purpose is required, such a requirement shall be formulated in a manner that is not more trade restrictive than necessary to fulfil a legitimate objective;
- (b) the Party may specify the form of labels or markings, but shall not require any prior approval, registration or certification in this regard. This provision is without prejudice to the right of the Party to require prior approval of the specific information to be provided on the label or marking in the light of the relevant domestic regulation;
- (c) where the Party requires the use of a unique identification number by economic operators, the Party shall issue such number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;
- (d) the Party shall remain free to require that the information on the marks or labels be in a specified language. Where there is an international system of nomenclature accepted by the Parties, this may also be used. The simultaneous use of other languages shall not be prohibited, provided that, either the information provided in the other languages shall be identical to that provided

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in the specified language, or that the information provided in the additional language shall not constitute a deceptive statement regarding the product; and

- (e) the Party shall, in cases where they consider that legitimate objectives under the TBT Agreement are not compromised thereby, endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product.]

### **[CN: Article X.9: Canada-EU CETA Committee on Technical Barriers to Trade**

1. The Parties hereby establish a Canada-EU CETA Committee on Technical Barriers to Trade (herein referred to as the “Canada-EU CETA TBT Committee”), comprised of trade and relevant regulatory officials, as set out in Annex X.X.

2. The Canada-EU CETA TBT Committee’s functions include:

- (a) monitoring the implementation and administration of this Chapter;
- (b) promptly addressing any issue that a Party raises, under this Chapter or the TBT Agreement, related to the development, adoption or application of standards, technical regulations or conformity assessment procedures;
- (c) on a Party’s request, facilitating discussion of the assessment of risk or hazard conducted by the other Party, or the chosen level of protection related to a given measure;
- (d) enhancing cooperation by the Parties in the development and review of standards, technical regulations and conformity assessment procedures and good regulatory practices;
- (e) facilitating requests made by either Party for their technical regulations, the results of conformity assessment procedures, or conformity assessment bodies to be accepted or recognised in the territory of the other Party;
- (f) exchanging information on standards, technical regulations, and conformity assessment procedures including those of third parties or international bodies;
- (g) on a Party’s request, facilitating consultations between the Parties on any matter arising under this Chapter;
- (h) reviewing this Chapter in the light of any developments in the WTO TBT Committee or under the TBT Agreement, and, if necessary, developing recommendations for amendments to this Chapter for consideration by the [*CETA Trade Council*]<sup>3</sup>;
- (i) reporting to the [*CETA Trade Council*] on the implementation of this Chapter as appropriate;
- (j) taking any other steps that the Parties consider will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade between the Parties.

3. Further to subparagraph 2(b) where a matter covered under this Chapter or the TBT Agreement cannot be clarified or resolved through the Canada-EU CETA TBT Committee, the Parties may establish an ad hoc technical working group with a view to identifying a workable and practical solution that would facilitate trade. A working group shall comprise representatives of the Parties, where appropriate, with responsibility for the standards, technical regulations or conformity assessment procedures in question. Working groups may include or consult with non-governmental experts and stakeholders as mutually agreed by the

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<sup>3</sup> Drafter’s note: *The intent of this reference is to refer to the governing body established for the CETA.*

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Parties. Where a Party declines a request from the other Party to establish a working group, it shall, on request, explain the reasons for its decision.

4. Consultations under subparagraph 2(g) shall constitute consultations under Article XXXX (Dispute Settlement - Consultations) and shall be governed by the procedures set out in that Article.

5. Each Party is responsible for ensuring that the relevant institutions and persons in its territory participate, as appropriate, in the activities related to this Chapter and for coordinating such participation. The Canada-EU CETA TBT Committee shall meet once a year unless the Parties otherwise agree. The Canada-EU CETA TBT Committee shall carry out its work through communication channels agreed to by the Parties, which may include electronic mail, videoconferencing or other means.] *[EC: The EC proposes to postpone consideration of institutional provisions until a later stage]*

### **[CN: Article X10: Entry into Force]**

The Parties shall implement this Chapter as soon as is practicable and under no circumstances later than [x] years from the date of entry into force of this Agreement.]

### **[CN: Article X11: Information Exchange]**

Any information that is provided on request of a Party pursuant to the provisions of this Chapter shall be provided in print or electronically within a reasonable period of time. A Party shall endeavor to respond to each such request within 60 days.]

### **[CN: Annex X.X]**

#### **Canada-EU CETA TBT Committee**

The Parties shall be represented at the Canada-EU CETA TBT Committee by:

(a) in the case of the European Union xxx; and

(b) in the case of Canada, the Department of Foreign Affairs and International Trade, or its successor.] *[EC: See note to Clause X.9]*

EC Reserve

CHAPTER [XX]  
SANITARY AND PHYTOSANITARY MEASURES

CAN TEXT

**[C: Article 501: Objectives**

The objectives of this Chapter are to:

- (a) protect human, animal and plant life or health in the territory of each Party;
- (b) ensure that the Parties' sanitary and phytosanitary (SPS) measures do not create unjustified barriers to trade; and
- (c) enhance the implementation of the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures (WTO SPS Agreement)*.]

**[C: Article 502: Scope and Coverage**

This Chapter applies to all SPS measures that may, directly or indirectly, affect trade between the Parties.]

**[C: Article 503: Definitions**

**sanitary or phytosanitary measure** means any measure referred to in Annex A, paragraph 1 of the SPS Agreement;

**SPS Agreement** means the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures*;]

**[C: Article 504: Rights and Obligations]**

1. The Parties affirm their existing rights and obligations with respect to each other under the WTO SPS Agreement.
2. The Parties agree to use the WTO dispute settlement procedures for any formal disputes regarding SPS measures]

**[C: Article 505: Committee on Sanitary and Phytosanitary Measures]**

1. The Parties hereby establish a Committee on Sanitary and Phytosanitary Measures (SPS Committee), comprising representatives of each Party from the relevant trade and regulatory agencies, ministries or other institutions who have responsibility for SPS matters.
2. The SPS Committee shall
  - (a) provide a regular forum for exchange of information relating to each Party's regulatory systems, including the scientific and risk assessment basis for SPS measures;
  - (b) provide direction for the identification, management and resolution of SPS issues; and
  - (c) improve understanding between the Parties related to specific implementation issues concerning the *WTO SPS Agreement*, including clarification of regulatory frameworks and decision making procedures
3. The SPS Committee may consider, among other things, the following:
  - (a) the promotion of enhanced transparency of SPS measures;
  - (b) the promotion of cooperation between the Parties on SPS issues under discussion in multilateral and international fora including the WTO SPS Committee, the Committees of the Codex Alimentarius Commission, the International Plant Protection Convention (IPPC), and the World Organization for Animal Health (OIE).
4. Unless the Parties otherwise agree, the SPS Committee shall meet no later than six months following the entry into force of this Agreement. The SPS Committee shall establish its rules of procedures and work program at its first meeting.

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5. Following its initial meeting, the SPS Committee shall meet as required, normally on an annual basis. If agreed by the Parties, a meeting of the SPS Committee may be held by videoconference or teleconference.
6. The SPS Committee shall report annually on its activities and work program to the [CETA Oversight Body].
7. Upon entry into force of this Agreement, each Party shall designate a Contact Point to coordinate the SPS Committee's agenda and to facilitate communications on SPS matters.
8. The Parties may establish Sub-committees, as appropriate, to identify and discuss technical and scientific issues within the scope of this Agreement, including food safety, plant health or animal health.
9. The SPS Committee and/or sub-committees may also establish ad hoc technical working groups as needed.
10. A Party may refer any SPS issues to the SPS Committee. The SPS Committee should consider any matter referred to it as expeditiously as possible.
11. Pursuant to paragraph 10, in the event that the SPS Committee is unable to resolve an issue expeditiously, the SPS Committee shall, upon request of a Party, report promptly to the CETA Oversight Body on the matter.]

## EU TEXT

### [EU: Section Sanitary and Phytosanitary Measures

1. This Agreement does not affect the Agreement between the European Community and the Government of Canada on sanitary measures to protect public and animal health in respect of trade in animals and animal products,.]

### [EU: Article Phytosanitary measures

2. The objective of this section is to facilitate trade between the Parties in the field of phytosanitary legislation, whilst safeguarding plant health by further implementing the principles of the WTO on the Application of Phytosanitary Measures ("the WTO SPS Agreement").

3. The objectives of this section are pursued through the “Agreement on Phytosanitary Measures Applicable to Trade in Plants and Plant Products. , which is attached as Annex XXX.

4. By way of derogation from Article ..., the Committee, when dealing with phytosanitary measures, shall be composed of representatives of the Community and Canada with responsibility for Phytosanitary matters. This Committee shall then be called the "Joint Management Committee for Phytosanitary Matters". The functions of the Committee are set out in Article 16 of Annex XXX.

5. For the purpose of Article 184, consultations held under Article 16 of Annex XXX shall be deemed to constitute the consultations referred to in Article ..., unless the Parties decide otherwise.]

## [EU: ANNEX XXX

(Referred to in Article ...)

### **AGREEMENT ON PHYTOSANITARY MEASURES APPLICABLE TO TRADE IN PLANTS AND PLANT PRODUCTS**

The Parties, as defined in Article ... of the CETA:

DESIRING to facilitate trade between the Community and Canada in plants and plant products, whilst safeguarding plant health;

CONSIDERING that the implementation of the present Agreement shall take place in accordance with the internal procedures and legislative processes of the Parties;

CONSIDERING that recognition of equivalence will be gradual and progressive and should apply to priority sectors;

CONSIDERING that one of the objectives of Part IV, Title I of the Agreement is to progressively and reciprocally liberalise trade in goods in accordance with the GATT 1994;

REAFFIRMING their rights and obligations under the WTO Agreement and its Annexes and in particular the SPS Agreement;

DESIRING to ensure full transparency as regards phytosanitary measures applicable to trade, to have a common understanding of the WTO SPS Agreement and to implement its principles and provisions;



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RESOLVED to take the fullest account of the risk of spread of pests and of the measures put in place to control and eradicate such pests, to protect plant health while avoiding unnecessary disruptions to trade;]

[EU: HAVE AGREED AS FOLLOWS:

### *Article 1* **Objectives**

1. The objective of this Agreement is to facilitate trade in plants, plant products and other goods between the Parties, whilst safeguarding plant health, by :

- (a) ensuring full transparency as regards Phytosanitary measures applicable to trade;
- (b) establishing a mechanism for the recognition of equivalence of such measures maintained by a Party consistent with the protection of plant health;
- (c) recognition of the plant health status of the Parties and applying the principle of regionalisation;
- (d) further implementing the principles of the WTO SPS Agreement;
- (e) establishing mechanisms and procedures for trade facilitation; and
- (f) improving communication and co-operation between the Parties on Phytosanitary measures.]

### [EU: *Article 2* **Multilateral obligations**

The Parties reaffirm their rights and obligations under the WTO Agreement and, in particular, the WTO SPS Agreement. These rights and obligations shall underline the activities of the Parties under this Agreement.]

### [EU: *Article 3* **Scope**

1. This Agreement applies to the following measures in so far as they affect trade between the Parties:

2. Without prejudice to paragraph 4, this Agreement shall not apply to matters listed in Appendix I.B.

3. The Committee mentioned in Article 16 may modify this Agreement by means of a decision to extend the scope to other phytosanitary measures affecting trade between the Parties.]

### [EU: *Article 4* **Definitions**

For the purposes of this Agreement the following definitions shall apply:

- a) “plants” means living plants and living parts thereof, including seeds, as set out in Appendix I.B. Living parts of plants shall be considered to include:
- (i) fruits, in the botanical sense, other than that preserved by deep freezing;
  - (ii) vegetables, other than those preserved by deep freezing;
  - (iii) tubers, corms, bulbs, rhizomes;
  - (iv) cut flowers;
  - (v) branches with foliage;
  - (vi) cut trees retaining foliage; and
  - (vii) plant tissue cultures.
- b) “plant products” means unmanufactured material of plant origin (including grain) and those manufactured products that, by their nature or that of their processing, may create a risk for the introduction and spread of pests;
- c) “seeds” means seeds in the botanical sense, intended for planting;
- d) “other goods” means packaging, conveyance, container, used agricultural machinery, soil, growing mediums and any other organism, object or material capable of harbouring or spreading pests;
- e) “pests” means any species, strain or biotype of plant, or pathogenic agent injurious to plants or plant products;
- f) “Phytosanitary measures” means measures as defined in paragraph 1 of Annex A to the WTO SPS Agreement, falling within the scope of this Agreement;
- g) “appropriate level of Phytosanitary protection” means the appropriate level of Phytosanitary protection as defined in paragraph 5 of Annex A to the WTO SPS Agreement;
- h) “pest free area” means: an area or officially defined part of any of the Parties territories with a uniform status as regards the distribution of a specific pest (see “pest status”);
- i) “consignment” means a quantity of plants, plant products and/or other articles being moved from one country to another and covered, when required, by a single phytosanitary certificate (a consignment may be composed of one or more commodities or lots).
- j) “equivalence for trade purposes” (herein referred to as equivalence) means the state wherein measures applied in the exporting Party, whether or not different from the measures applied in the importing Party, objectively achieve a similar level of protection as applicable in the importing Party;
- k) “sector” means the production and trade structure for a product or category of products in a Party;
- l) “sub-sector” means a well-defined and controlled part of a sector;

- m) "commodities" means a type of plant, plant product, or other article being moved for trade or other purpose;
- n) "specific import authorisation" means a formal prior authorisation by the competent authorities of the importing Party addressed to an individual importer as a condition for import of a single consignment or multiple consignments of a commodity from the exporting Party, within the scope of this Agreement;
- o) "measures" includes any law, regulation, procedure, requirement or practice, put in place by the competent authorities of one of the Parties;
- p) "working days" means working days for the authorities which must take the required action;
- q) "Agreement" means the entire text of this Agreement and all its Appendices.]

**[EU: Article 5  
Competent authorities**

1. The competent authorities of the Parties are the authorities competent for the implementation of the measures referred to in this Agreement, as provided for in Appendix II.
2. The Parties shall, in accordance with Article 12, inform each other of any significant changes in the structure, organisation and division of competency of their competent authorities.]

**[EU: Article 6  
Recognition for trade of pest status and regional conditions**

*A. Recognition of pest status*

- a) The Parties recognise for trade the status of the pests specified in Appendix III.B..
- b) Any change to the list of pest status as in Appendix III.B will be immediately notified to the other Party. Without prejudice to Articles 8 and 14 and unless the importing Party raises an explicit objection and requests supportive or additional information or consultations and/or verification, each Party shall take without undue delay the necessary legislative and administrative measures to allow trade on the basis of the provision of subparagraph (a).

*B. Recognition of Pest Free Areas*

1. The Parties recognise the concept of PFAs, in respect of ISPM 4.
2. (a) As regards pests, each Party shall ensure that trade in plants, plant products and other goods takes account of the pest status in a region recognised by the other Party.]

**[EU: Article 7**

**Determination of equivalence**

1. Equivalence may be recognised in relation to an individual measure and/or groups of measures and/or systems applicable to a sector or sub-sector.
2. The determination of equivalence shall respect ISPM 24 on Guidelines for the determination and recognition of equivalence of phytosanitary measures. Specific provisions on the procedure may be laid down.]

**[EU: Article 8****Transparency and trade conditions**

1. For commodities referred to in Appendix I, the Parties agree to apply general import conditions. Without prejudice to the decisions taken in accordance with Article 6, the import conditions of the importing Party are applicable to the total territory of the exporting Party. Upon entry into force of this Agreement and in accordance with the provisions of Article 12, the importing Party shall inform the exporting Party of its Phytosanitary import requirements for commodities referred to in Appendices I.A and I.B. This information shall include, as appropriate, the models for the official certificates or attestations, as prescribed by the importing Party.
2. (a) For the notification by the Parties of amendments or proposed amendments of the conditions referred to in paragraph 1, they shall comply with the provisions of the SPS Agreement and subsequent decisions, as regards notification of measures. Without prejudice of the provisions of Article 14, the importing Party shall take into account the transport time between the Parties to establish the date of entering into force of the amended conditions referred to in paragraph 1.  
  
(b) In case of failure by the importing Party to comply with these notification requirements, the importing Party shall continue to accept the certificate or attestation guaranteeing the previously applicable conditions, until .... days after entering into force of the amended import conditions.
3. (a) Without undue delay after recognition of equivalence, the Parties shall take the necessary legislative and administrative measures to implement the recognition of equivalence in order to allow on that basis trade between them of commodities referred to in Appendix I in sectors and sub-sectors, for which all respective Phytosanitary measures of the exporting Party are recognised as equivalent by the importing Party. For these commodities the model for the official certificate or official document required by the importing party may then be replaced by a certificate drawn up as provided for in Appendix ....  
  
(b) For commodities in sectors or sub-sectors for which one or some but not all measures are recognised as equivalent, trade shall continue on the basis of compliance with the conditions referred to in paragraph 1. Upon request of the exporting Party, the provisions of paragraph 5 shall apply.
4. For the commodities referred to Appendix I, import shall not be subject to specific import authorisations.

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5 For conditions affecting trade of the commodities referred to in paragraph 1, upon request of the exporting Party, the Parties shall enter into consultations in accordance with the provisions of Article 16, in order to agree on alternative or additional import conditions of the importing Party. Such alternative or additional import conditions may, when appropriate, be based on measures of the exporting Party recognised as equivalent by the importing Party. If agreed, the importing Party shall take the necessary legislative and/or administrative measures to allow import on that basis, within 90 days.

6 Upon request of a Party, the other Party shall provide full explanation and supporting data for the determinations and decisions covered by this Article.]

### [EU: Article 9

#### **Certification procedures**

1. For purposes of certification procedures, the Parties respect ISPM 7 on Export certification system and ISPM 12 on Guidelines for phytosanitary certificates.

2. Certificates or official documents referred to in Article 8(1) and (3) shall be issued as set out in Appendix IX.

3. The Committee referred to in Article 16 may agree on rules to be followed in case of electronic certification, withdrawal or replacement of certificates.

4 The official certificates or attestations shall be accepted without regular audit/inspection of the exporting Party's certification system, unless non-compliances have been notified or at the start of a new trade.]

### [EU: Article 10

#### **Verification**

1. In order to maintain confidence in the effective implementation of the provisions of this Agreement, each Party, within the scope of this Agreement, has the right:

- (a) to carry out, in accordance with the guidelines of Appendix VII, verification of all or part of the other Party's authorities' total control programme. The expenses of such verification shall be born by the Party carrying out the verification;
- (b) from a date to be determined by the Parties, to receive on its request from the other Party submission of all or part of that Party's total control programme and a report concerning the results of the controls carried out under that programme;

2. Either Party may share the results and conclusions of its verifications with third countries, and make them publicly available.

3. The Committee referred to in Article 16 may modify, by means of a decision, Appendix VII, taking due account of relevant work carried out by international organisations.

4. The results of verification may contribute to measures by the Parties or one of the Parties referred to in Articles 6, 7, 8 and 11. ]

**[EU: Article 11**

**Import checks and inspection fees**

1. The Parties agree that import checks on importation by the importing Party of consignments from the exporting Party shall respect ISPM 20 on Guidelines for a phytosanitary import regulatory system and the principles set out in Appendix VIII.A. The results of these checks may contribute to the verification process referred to in Article 10.

2. Import inspection fees may only cover the costs incurred in by the competent authority for performing import checks.

3. The importing Party shall inform the exporting Party of any amendment, including the reasons for these amendments concerning the measures affecting import checks and inspection fees and of any significant changes in the administrative conduct for such checks.

4. From a date to be determined by the Committee referred to in Article 16, the Parties may agree on the conditions to approve each other's controls referred to in Article 10.1 (b), with a view to adapt the frequency of import checks or replace import checks for specified commodities. These conditions shall be included in Appendix VII by a decision of the Committee referred to in Article 16. From that date, the Parties may reciprocally approve each other's controls for certain commodities and, consequently reduce or replace the import checks for these commodities.]

**[EU: Article 12**

**Information exchange**

1. The Parties shall exchange information which is relevant for the implementation of this Agreement on a systematic basis, for developing standards, for providing assurance, for engendering mutual confidence and for demonstrating the efficacy of the programmes controlled. Where appropriate, this exchange of information may include exchanges of officials.

2. The Parties shall also exchange information on other relevant topics including:

- (a) significant events concerning commodities covered by this Agreement, including information exchange provided for in Articles 7 and 8;
- (b) the results of verification procedures provided for in Article 10;
- (c) the results of import checks provided for in Article 11 in case of rejected or non-compliant consignments of plants and plant products;
- (d) scientific opinions, relevant to this Agreement and produced under the responsibility of a Party;
- (e) notifications of interception for regulated pests, as listed in Appendix zz.

3. The Parties shall provide for the submission of scientific papers or data to the relevant scientific fora to substantiate any views or claims made in respect of a matter arising under this Agreement. Such information shall be evaluated by the relevant scientific fora in a timely manner, and the results of that examination shall be made available to both Parties.

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4. When the information referred to in this Article has been made available by notification to the WTO in accordance with the relevant rules or when the above information has been made available on the official, publicly accessible and fee free web-sites of the Parties, the addresses of which are set out in Appendix XI.B., the information exchange shall be considered to have taken place.

In addition, for pests of known and immediate danger to the other Party, direct communication to the relevant Party shall be sent by mail or e-mail. The guidance provided by FAO International Standard for Phytosanitary Measures N°17 “Pest reporting” shall be followed.

5. The contact points for the information exchange referred to in this Article are to be established.]

### [EU: Article 13

#### **Notification and consultation**

1. Each Party shall notify in writing to the other Party without undue delay of any serious or significant plant health risk concerning:

- (a) any measures affecting pest free area referred to in Article 6;
- (b) the presence or evolution of any pests listed in Appendix III;
- (c) findings of phytosanitary relevance or important associated risks with respect to pests which listed in Appendix yyy; and
- (d) any additional measures beyond the basic requirements of their respective measures taken to control or eradicate pests.

2. Written notification means notification by mail, fax or e-mail. Notifications by e-mail shall be signed electronically and shall only be sent between the contact points set out in Appendix XI.

3. Where a Party has serious concerns regarding a risk to plant health, consultations regarding the situation shall, on request, take place as soon as possible and, in any case, within 13 working days. Each Party shall endeavour in such situations, to provide all the information necessary to avoid a disruption in trade, and to reach a mutually acceptable solution consistent with the protection of plant health.

4. Upon request of a Party, consultations referred to in paragraphs 3 and 4 shall be held [by video or audio conference]. The requesting Party shall ensure the preparation of the minutes of the consultation, which shall be formally approved by the Parties. For purposes of this approval, the provisions of Article 12(6) shall apply.]

### [EU: Article 14

#### **Emergency measures**

1. In the event that the exporting Party takes domestic measures to control any cause likely to constitute a serious hazard to plant health, the exporting Party, without prejudice to

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the provisions of paragraph 2, shall take appropriate measures to prevent introduction of the hazard into the territory of the importing Party.

2. The importing Party may, on serious plant health grounds, take emergency measures necessary for the protection of plant health. For consignments in transport between the Parties, the importing Party shall consider the most suitable and proportional solution in order to avoid unnecessary disruptions to trade.

3. The Party taking the measures shall notify the other Party thereof within one working day of the decision to implement them. Upon request of either Party and in accordance with the provisions of Article 13(3), the Parties shall hold consultations regarding the situation within 12 working days of the notification. The Parties shall take due account of any information provided through such consultations and shall endeavour to avoid unnecessary disruption to trade, taking into account, where applicable, the outcome of the provisions of Article 13(3).]

### [EU: Article 15 Outstanding issues

The principles of this Agreement shall be applied to address outstanding issues falling within its scope, to be listed in Appendix X. The Committee referred to in Article 16 may modify, by means of a decision, Appendix X, and, as appropriate, the other Appendices, to take account of progress made and of new issues identified.]

### [EU: Article 16 Joint Management Committee

1. The Joint Management Committee, hereafter called the Committee, established in Article 89(3) of the Agreement shall meet within the first year, after the entry into force of this Agreement, and on request of either Party thereafter, not exceeding however a frequency in principle of one meeting a year. If agreed by the Parties, a meeting of the Committee may be held by video or audio-conference. The Committee may also address issues out of session, by correspondence.

2. The Committee shall have the following functions:

- (a) *to monitor the implementation of this Agreement and consider any matter relating to this Agreement, and examine all matters which may arise in relation to its implementation;*
- (b) to review the Appendices to this Agreement, notably in the light of progress made under the consultations and procedures provided for under this Agreement;

**Comment [DdI2]:** Página: 15  
Se refiere a los Anexos? O cambiar por la palabra ANnexes



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(c) *in light of the review provided for in paragraph(b) or as provided in this Agreement, modify by means of a decision, Appendices I to XII; and*

d) *in light of the review provided for in paragraph (b), make recommendations for modifications to this Agreement.*

3. The Parties agree to establish technical working groups, when appropriate, consisting of expert-level representatives of the Parties, which shall identify and address technical and scientific issues arising from the application of this Agreement. When additional expertise is required, the Parties may establish *ad hoc* groups, including scientific groups. Membership of such *ad hoc* groups need not be restricted to representatives of the Parties.

4. The Committee shall report to the ..... established under the CETA.

5. The Committee shall adopt at its first meeting its working procedures.]

### [EU: Article 17

#### **Facilitation of communication**

Without prejudice of the provisions of Articles 12, 13, 14 and 16, the Committee referred to in Article 16 may agree on an arrangement to facilitate correspondence, exchange of information and associated documents and procedures and operation of the Committee.]

### [EU: Article 18

#### **Territorial application**

This Agreement shall apply, on the one hand, as regards plants and plant products and other goods to the territories of Member States of the Community and, on the other hand to the territory of Canada, as laid down in Appendix XI.]

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[EU: *Appendix I*

## **COVERAGE**

*Appendix IA*

- Plants and plant products that, by their nature or that of their processing, may create a risk for the introduction and spread of pests

*Appendix IB*

### **Matters to which this Agreement initially does not apply**

1. Genetically Modified Organisms (GMO's)]

LIMITED

**COMPETENT AUTHORITIES****A. Competent authorities of the Community**

Control is shared between the national services of the Member States and the European Commission. In this respect the following applies:

- As regards exports to Canada, the Member States are responsible for control of the production circumstances and requirements, including statutory inspections and issuing plant health certificates attesting to the agreed standards and requirements.
- As regards imports from Canada, the Member States are responsible for control of the compliance of the imports with the Community's import conditions.
- The European Commission is responsible for overall co-ordination, inspection/audits of inspection systems and the necessary legislative action to ensure uniform application of standards and requirements within the Internal European Market.

**B. Competent authorities of Canada]**

LIMITED

*Draft consolidated CETA text as at 13.1.10*

[EU: Appendix III]

*This chapter should still be left in and it can be decided together with Canada.*

**LISTS OF NOTIFIABLE DISEASES AND PESTS FOR WHICH REGIONAL  
FREEDOM CAN BE RECOGNISED**

**Pests subject to notification, for which the status of the Parties is recognised and for  
which regionalisation decisions may be taken<sup>4</sup>**

**As regards the situation in Canada:**

1. Pests not known to occur in any part of Canada.
2. Pests known to occur in Canada and under official control.
3. Pest known to occur in Canada, under official control and for which pest free areas are established.

**As regards the situation in the European Community:**

1. Pests not known to occur in any part of the Community and relevant for the entire Community, or for part of it.
2. Pests known to occur in the Community and relevant for the entire Community.
3. Pests known to occur in the Community and for which pest free areas are established.]

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<sup>4</sup> The Committee referred to in Article 16 shall complete these lists by means of a decision

LIMITED

LIMITED

*Draft consolidated CETA text as at 13.1.10*

[EU: *Appendix IV*]

## **PEST FREE AREAS**

### **Pests**

The criteria for the establishment of a region free from certain pests shall comply with the provisions of either:

- the FAO International Standard for Phytosanitary Measures N° 4 on “Requirements for the establishment of pest free areas” and the relevant definitions of the FAO International Standard for Phytosanitary Measures N° 5 on “Glossary of phytosanitary terms”; or
- Article 2(1)(h) of Council Directive 2000/29/EC.]

LIMITED

LIMITED

*Draft consolidated CETA text as at 13.1.10*

[EU: *Appendix V*]

**PRIORITY SECTORS OR SUB-SECTORS FOR WHICH EQUIVALENCE MAY BE  
RECOGNISED**

List of priorities referred to in Article 7(4), to be completed by the Committee referred to in  
Article 16.]

LIMITED

LIMITED

*Draft consolidated CETA text as at 13.1.10*

[EU: *Appendix VI*

**PROCESS OF DETERMINATION OF EQUIVALENCE]**

LIMITED

LIMITED

*Draft consolidated CETA text as at 13.1.10*

[EU: *Appendix VII*

**GUIDELINES FOR CONDUCTING VERIFICATIONS]**

LIMITED



[EU: *Appendix VIII*]**IMPORT CHECKS AND INSPECTION FEES****A. Principles of import checks**

Import checks consist of documentary checks, identity checks and physical checks

In carrying out the checks for plant health purposes on a risk basis, the importing Party shall ensure that the plants, plant products and other goods and their packaging shall be meticulously inspected on an official basis, either in their entirety or by representative sample, and that if necessary the vehicles transporting them shall be inspected meticulously on an official basis in order to make sure, as far as can be determined, that they are not contaminated by pests.

On the importing Party's initiative, a reduced frequency of import inspection can be set up for the physical phytosanitary controls of regulated commodities, with exception for living plants

In the event that the checks reveal non-conformity with the relevant standards and/or requirements, the importing Party shall take official measures proportionate to the risk involved. Wherever possible, the importer or his representative shall be given access to the consignment and the opportunity to contribute any relevant information to assist the importing Party in taking a final decision concerning the consignment. Such decision shall be proportional to the risk.

**B. Frequencies of physical checks**

Plants and plant products

**(a) Import into the Community**

*For plants, plant products and other goods listed in Annex V, Part B to Council Directive 2000/29/EC:*

Type of frontier check	Frequency Rate
<b>1. Documentary checks</b>	The documentary checks shall be carried out for 100%.
<b>2. Identity checks</b>	The identity checks shall be carried out for 100%.
<b>3. Physical checks</b>	<p>The plants, plant products and other goods, and their packaging shall be meticulously inspected on an official basis, either in their entirety or by a risk based representative sample, and that if necessary the vehicles transporting them shall also be inspected meticulously on an official basis in order to make sure, as far as can be determined, that they are not contaminated by pests.</p> <p>A reduced frequency of import inspection can be set up for the physical phytosanitary controls of regulated commodities, with exception for living plants</p>

*For plants, plant products and other goods not listed in Annex V, Part B to Council Directive 2000/29/EC:*

The importing party may, on a variable basis, carry physical checks in order to make sure, as far as can be determined, that they are not contaminated by pests.

**(b) Import into Canada]**

**CERTIFICATION****A. Principles of certification**

Plants and plant products:

In respect of certification of plants and plant products, the competent authorities shall apply the principles laid down in the FAO International Standards for Phytosanitary Measures n°7 “Export Certification System” and n°12 “Guidelines for Phytosanitary Certificates”.

**B. Certificate referred to in article 8(3)****C. Official languages for certification**Import into Community

Plants and plant products:

The certificate must be drawn up in at least one of the official languages of the Community and preferably in one of the official languages of the Member State of destination.

**Import into Canada**

The phytosanitary certificate must be drawn up in .....]

LIMITED

*Draft consolidated CETA text as at 13.1.10*

[EU: *Appendix X*

## OUTSTANDING ISSUES

To be considered by the Committee referred to in Article 16 for completion.]

LIMITED

LIMITED

*Draft consolidated CETA text as at 13.1.10*

[EU: *Appendix XI*]

## **TERRITORIAL APPLICATION**

### For the Community:

The territories of Member States of the Community as laid down in Article 1 of Council Directive 2000/29/EC.

### For Canada]

LIMITED

## CHAPTER [XX]

## CUSTOMS PROCEDURES, TRADE FACILITATION AND RULES OF ORIGIN

*October 19, 2009: EU proposes to modify the title of the chapter*

*October 19, 2009: Canada agrees*

**Article X-1: Objectives and Principles**

1. The Parties acknowledge the importance of customs and trade facilitation matters in the evolving global trading environment.

*October 19, 2009: EU proposes a new paragraph 1*

*October 19, 2009: Canada agrees*

2. The Parties shall to the extent possible cooperate [~~provide technical assistance~~] and exchange information, including information on best practices, for the purpose of promoting the application of and compliance with the trade facilitation measures agreed upon under this Agreement.

*October 19, 2009: EU proposes to remove the reference to technical assistance*

*October 19, 2009: Canada agrees*

3. The Parties agree that measures to facilitate trade shall not hinder mechanisms to protect persons through effective enforcement of and compliance with national requirements.

4. [EU: The Parties agree that import, export and transit requirements and procedures shall be no more administratively burdensome or trade restrictive than necessary to achieve legitimate objectives.]

*October 19, 2009: EU proposes a new paragraph 4*

*October 19, 2009: Canada to consult*

5. [EU: The Parties agree that international trade and customs instruments and standards shall be the basis for import, export and transit requirements and procedures, where such instruments and standards exist, except where they would be an inappropriate or ineffective means for the fulfillment of the legitimate objectives pursued.]

*October 19, 2009: EU proposes a new paragraph 5*

*October 19, 2009: Canada to consult*

**Article X-2: Transparency**

1. Each Party shall publish or otherwise make available, including through electronic means, all their legislation, regulations, judicial decisions, policies, as well as administrative rulings of general application relating to its requirements for imported or exported goods.
2. Each Party shall [~~C:make public~~] ~~publish~~ [EU: make available] in advance, including on the internet, any regulations of general application governing customs matters that it proposes to adopt and provide interested persons the opportunity to comment prior to their adoption.

*October 19, 2009: EU proposes to modify the text as it does not publish regulations etc. in advance and prefers language referring to making documents available on the internet, as opposed to publishing documents on the internet*

*October 19, 2009: Canada proposes new text [make public] to capture the idea that regulations etc should be made public in advance*

- ~~3. Each Party shall designate or maintain one or more contact points to address inquiries by interested persons concerning customs matters and make available on the internet information concerning the procedures for making such inquiries.~~

#### Article X- 43: Release of Goods

1. Each Party shall adopt or maintain simplified customs procedures for the efficient release of goods in order to facilitate trade between the Parties and reduce costs for importers and exporters. Such procedures:

- (a) shall allow for the release of goods within a period no greater than that required to ensure compliance with its [EU: the laws, rules and other legal instruments applicable in each of the contracting Parties] [C: domestic law];

*October 19, 2009: Canada notes that as a common law country, the use of "domestic law" implies that this also covers judicial decisions*

*October 19, 2009: EU to consult*

- (b) may require the submission of more extensive information through post-entry accounting and verifications, as appropriate;

*October 19, 2009: EU seeks clarification of this provision. Canada explained that Canada provides for release on minimum documentation but may require full documentation at time of accounting or for post-entry verification purposes. EU will consult.*

- (c) shall allow goods, and to the greatest extent possible controlled or regulated goods, to be released at the first point of arrival ~~without temporary transfer to warehouses or other facilities;~~

*October 19, 2009: EU notes that it does not require the reference to temporary transfer to warehouses and proposes to delete this phrase. The Parties agree.*

- (d) [C: shall allow goods in need of emergency clearance to be released 24 hours a day, seven days a week, including on holidays; ]

*October 19, 2009: EU is not certain that 24/7 service can be provided, what is the intent and suggests deletion.*

*October 19, 2009: Canada notes that this provision is designed to cover emergency situations, such as goods being sent to help with a natural disaster*

*October 19, 2009: EU to consult*

- (e) shall allow an importer or its agent to remove goods from custom's control prior to the final determination and payment of customs duties, taxes, and fees. Before releasing the goods, a Party may require that an importer provide sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument.

~~[C: The guarantee shall be limited to an amount calculated to ensure compliance~~

## LIMITED

*Draft consolidated CETA text as at 13.1.10*

~~with a Party's requirements for customs duties, taxes and fees, and shall not represent an indirect protection to domestic products or a taxation of imports for fiscal purposes. ]~~

*October 19, 2009: EU proposes to delete the last sentence in subparagraph (e)*

*October 19, 2009: Canada agrees*

2. **[C:]** Each Party shall adopt or maintain separate customs procedures for the expedited release of express shipments. These procedures shall:

(a) where applicable, use the World Customs Organization's *Guidelines for the Immediate Release of Consignments by Customs*;

(b) to the extent possible or where applicable, provide for advance electronic submission and processing of information before physical arrival of express shipments to enable their release upon arrival;

(c) to the extent possible, provide for clearance of certain goods with a minimum of documentation;

(d) not be limited by a maximum weight; and

(e) provide for, in accordance with a Party's domestic law, simplified documentation requirements for the entry of low-value goods as determined by that Party. ]

*October 19, 2009: EU does not have special procedures for express shipments and therefore proposes the deletion of subparagraph 2. The EU will provide additional information in relation to paragraph (a) and (e). Canada notes that it does have an express shipment program and views this provision as particularly facilitative for SMEs.*

*October 19, 2009: EU to consult*

1. Each Party shall, to the extent possible, ensure that its authorities and agencies involved in border and other import and export controls cooperate and coordinate to facilitate trade by, inter alia, converging import and export data and documentation requirements, and establishing a single location for one-time documentary and physical verification of consignments.

*October 19, 2009: Agreed*

2. Each Party shall ensure, to the greatest extent possible, that the requirements of its agencies related to the import and export of goods are coordinated to facilitate trade, regardless of whether these requirements are administered by an agency or on behalf of that agency by the customs administration.

*October 19, 2009: Agreed*

### **[EU: Article X-4– Customs Valuation**

3. The Agreement on the Implementation of Article VII of the GATT (1994) shall govern customs valuation applied to reciprocal trade between the parties.

4. The parties shall cooperate with a view to reaching a common approach to issues relating to customs valuation. ]

*October 19, 2009: EU proposes a new article on Customs Valuation.*



*October 19, 2009: Canada notes that a provision similar to paragraph 1 is contained in the NTMA chapter*

*October 19, 2009: EU to consult on the best location for this provision*

*October 19, 2009: Canada also notes differences between EU & Cdn approaches to customs valuation, and questions whether or not these issues could be best discussed at the WTO technical committee on customs valuation. EU to consult.*

#### **[EU: Article X-5– Fees and Charges**

With regard to all fees and charges of whatever character other than customs duties and the items that are excluded from the definition of a customs duty under Article X.X (Customs duty) imposed in connection with importation or exportation:

- (a) fees and charges shall only be imposed for services provided in connection with the importation or exportation in question or for any formality required for undertaking such importation or exportation;
- (b) fees and charges shall not exceed the approximate cost of the service provided;
- (c) fees and charges shall not be calculated on an ad valorem basis;
- (d) fees and charges shall not be imposed with respect to consular services;
- (e) the information on fees and charges shall be published via an officially designated medium, and where feasible and possible, official website. This information shall include the reason for the fee or charge for the service provided, the responsible authority, the fees and charges that will be applied, and when and how payment is to be made; and
- (f) new or amended fees and charges shall not be imposed until information in accordance with subparagraph (e) is published and made readily available.]

*October 19, 2009: EU proposes a new article on Fees and Charges.*

*October 19, 2009: Canada notes that these issues are typically addressed in the context of the NTMA chapter. The EU notes that this provision targets only fees and charges associated with customs.*

*October 19, 2009: EU to consult on the best location for this provision*

*October 19, 2009: Canada notes that some fees may be charged at the border, such as for the offloading of some goods, and these services/fees are set by the private sector and not regulated by Canada. The EU notes that their intention is to only cover administrative fees/charges in this context.*

*October 19, 2009: Canada to consult*

#### **[EU: Article X-6– Transit**

The Parties agree that their respective trade and customs legislation, provisions and procedures shall be based upon:

- (a) the need for non-discrimination in terms of requirements and procedures applicable to import, export and goods in transit, though it is accepted that consignments might be treated differently according to objective risk assessment criteria; and

(b) the need to facilitate transit movements.]

*October 19, 2009: EU proposes a new article on Transit.*

*October 19, 2009: Canada to consult.*

#### Article X-37: Risk Management

1. Each Party shall base its examination and release procedures and its post-entry verification procedures on risk assessment principles, rather than examining each shipment offered for entry in a comprehensive manner for compliance with all import requirements.
2. [C: The above procedures shall distinguish between a low-risk good and a high-risk good with the objective of facilitating and simplifying the processes and procedures for the release of a low-risk good, while improving controls on the release of a high-risk good.
3. The above shall not preclude a Party from conducting quality control and compliance reviews, which may require more extensive examinations.]
2. [EU: The Parties agree to cooperate in order to adopt and apply their import, export and transit requirements and procedures for goods on the basis of risk management principles, to be applied to focus compliance measures on transactions that merit attention.]

*October 19, 2009: EU proposes to replace Canada's proposed risk management paragraphs 2 & 3 a new paragraph 2. The EU prefers to not refer to "high risk" goods due to definitional issues and would therefore propose more general terminology.*

*October 19, 2009: Canada to consult*

#### Article X-5 8: Automation

1. [C: Each Party shall use information technologies that expedite procedures for the release of goods and shall work towards:
  - (a) developing or maintaining a fully interconnected and compatible system for a single window in order to facilitate trade between the Parties;
  - (b) developing a set of [C: compatible] ~~common~~ data elements and processes in accordance with the WCO Data Model and related WCO recommendations and guidelines;
  - (c) where possible, establishing a means of providing for the electronic exchange of information between customs administrations and the trading community for the purpose of encouraging rapid release procedures; and
  - (d) harmonizing, to the extent possible, the data requirements of its respective agencies with the objective of allowing importers and exporters to present all required data to one agency.]

*October 19, 2009: The EU proposes to delete paragraph 1. The EU is not legally committed to a single window, and does not have a mandate to seek a single window approach.*

*The EU also does not agree with the idea of a common set of data elements. The Parties have electronic customs declarations and therefore the EU proposes to delete subparagraph (c).*

*October 19, 2009: Canada notes that the intent of this agreement is to strive toward WTO-plus objectives and that this is the objective of this provision*

*October 19, 2009: Canada suggests that the parties consult on the issue of automation and seek mutually acceptable language.*

2. Each Party shall:

(a) endeavour to make available by electronic means customs forms that are required for the import or export of goods; and

(b) shall allow, in accordance with its domestic laws and procedures, the said customs forms to be submitted in electronic format.

*October 19, 2009: Agreed*

**[C: Article X-6 9: Advance Rulings for Tariff Classification**

1. Subject to Chapter X (Customs Procedures), a Party shall issue a written ruling prior to an importation in response to a written request by an importer in its territory, exporter or producer in the territory of the other Party, or their respective representatives.
2. A Party shall issue these rulings for tariff classification or rate of customs duty, except any form of surtax or surcharge, applicable upon importation;
3. For the purposes of paragraph 1, the issuance of advance rulings shall be administered in the same manner as the procedures set out in Article X.9 (Advance Rulings – Customs Procedures).]

**[EU: ARTICLE X-9- ADVANCE RULINGS**

1. Upon written request from traders, each Party shall issue written advance rulings, through its customs authorities, prior to the importation of a good into its territory in accordance with its laws and regulations, on tariff classification, origin or any other such matters as the Party may decide.
2. Subject to any confidentiality requirements in its [EU: laws and regulations] [C: domestic law], each Party shall publish, e.g. on the Internet, its advance rulings [C: of general application] on tariff classification and any other such matters as the Party may decide.
3. To facilitate trade, the Parties shall include in their bilateral dialogue regular updates on changes in their respective legislation and procedures on the matters referred to in paragraphs 1 and 2.]

*October 20, 2009: EU proposes alternative text on advance rulings to include both origin and tariff classification rulings. The Parties agree to exchange information on their respective legislation and procedures. EU notes that bilateral dialogue refers to the committee.*

*October 20, 2009: Canada notes that it does not publish its advance rulings due to confidentiality reasons, however, rulings of general application are published. Canada also*

*notes that it would need to include the term domestic law. EU to consult. Canada also notes that it prefers to use more specificity regarding the term “traders” in paragraph 1. Canada and the EU agree to include a reference to “and procedures” in paragraph 3.*

#### **Article X-7 10: Review and Appeal**

1. Each Party shall ensure that any administrative action or official decision taken in respect of the import of goods is reviewable promptly by judicial, arbitral or administrative tribunals or through administrative procedures.
2. Such tribunal or official acting pursuant to such administrative procedures shall be independent of the official or office issuing the decision and shall have the competence to maintain, modify or reverse the determination, in accordance with the Party’s domestic law.
3. Each Party shall provide for an administrative level of appeal or review, independent of the official or, where applicable, the office responsible for the original action or decision, before requiring a person to seek redress at a more formal or judicial level.
4. Each Party shall grant substantially the same rights of review and appeal of determinations of advance rulings by its customs administration as it provides to importers in its territory to any person who has received an advance ruling pursuant to Article X-6 (Advance Rulings for Tariff Classification).

*October 19, 2009: In General the EU agrees with this article but questions the use of the word “office” in paragraph 2 and suggests the phrase “competent authority”. The key is to ensure that the review body is independent from the ruling body and since, in Canada, both the ruling and review could be made within the CBSA, the use of the phrase competent authority is problematic.*

*October 20, 2009: Canada and the EU agree to keep the term “office” in paragraph 2.*

*October 20, 2009: Article agreed.*

#### **Article X-8 11: [C: Administrative Penalty Regime] [EU: Penalties]**

1. [C: Each Party shall adopt or maintain measures that allow for the imposition of administrative penalties for violations of its domestic customs law.
2. Each Party shall ensure that any penalties imposed for minor breaches of customs regulations or procedural requirements are proportionate and, in their application, do not give rise to undue delays in customs clearance, in accordance with Article VIII of the GATT 1994. ]

[EU: The Parties agree that their respective trade and customs legislation, provisions and procedures shall be based upon rules that ensure that any penalties imposed for breaches of customs regulations or procedural requirements be proportionate and non-discriminatory and, in their application, do not result in unwarranted delays. ]

*October 19, 2009: In General the EU agrees with this article, but under its system it is not possible to distinguish between administrative and criminal penalties and therefore proposes to replace paragraphs 1 & 2 with the single, more general paragraph above. Canada asked for additional information on the EU’s penalty regime.*

*October 19, 2009: Canada and the EU to consult, in particular on the implications of "respective trade...legislation" and criminal penalties.*

#### **Article X-9 12: ~~Protection of Information~~ Confidentiality**

1. Each Party shall, in accordance with its domestic law, treat as strictly confidential all information obtained pursuant to this Chapter that is by its nature confidential or that is provided on a confidential basis and shall protect that information from disclosure that could prejudice the competitive position of the person providing the information.
2. Where the Party receiving or obtaining information is required by its laws to disclose the information, that Party shall notify the Party or person who provided the information.
3. Each Party shall ensure that the confidential information collected pursuant to this Chapter shall not be used for purposes other than the administration and enforcement of customs matters, except with the permission of the person or Party who provided the confidential information.
4. A party may allow information collected pursuant to this Chapter to be used in any administrative, judicial or quasi-judicial proceedings instituted for failure to comply with customs-related laws and regulations implementing this Chapter. A Party shall notify the person or Party who provided the information in advance of such use.

*October 19, 2009: EU asks about this provision since a similar provision appears in Customs Procedures chapter under Confidentiality. The EU suggests adding 2 new paragraphs, based on text found in the CP chapter proposed by Canada.*

*October 19, 2009: Canada to consult.*

*October 20, 2009: Canada agrees to change the title to Confidentiality.*

*October 20, 2009: The Parties have agreed to the above provisions and agree to revisit and review the above article pending the outcome of similar provisions proposed elsewhere in the agreement.*

#### **Article X-10 13: Cooperation**

1. The Parties shall continue to cooperate in international fora, such as the World Customs Organization (WCO), to achieve mutually-recognized goals, such as those set out in the WCO *Framework of Standards to Secure and Facilitate Global Trade*.
2. The Parties shall regularly review relevant international initiatives on trade facilitation, including the Compendium of Trade Facilitation Recommendations, developed by the United Nations Conference on Trade and Development and the United Nations Economic Commission for Europe, to identify areas where further joint action would facilitate trade between the Parties and promote shared multilateral objectives.
3. The Parties agree to cooperate in accordance with the 1998 Agreement between Canada and the European Community on Customs Cooperation and Mutual Assistance in Customs Matters, including future amendments thereto.

*October 20, 2009: The Parties agree to include a reference to the CCMAA.*

- ~~2. The Parties recognize that technical cooperation between the Parties is fundamental to facilitating compliance with the obligations set forth in this Agreement and for reaching a better degree of trade facilitation.~~

*October 19, 2009: EU proposes deletions, Canada agrees*

~~3. The Parties agree to develop a technical cooperation programme in customs related matters under such mutually agreed terms, including scope, timing and cost of cooperative measures.~~

*October 19, 2009: EU proposes deletion*

*October 19, 2009: Agreed*

~~4. The Parties shall cooperate:~~

- ~~(a) ~~IC~~ in the enforcement of their respective customs related laws and regulations implementing this Agreement; ~~+~~~~
- ~~(b) to the extent practicable and for purposes of facilitating the flow of goods between the Parties, in such customs related matters as the collection and exchange of statistics regarding the importation and exportation of goods, the harmonization of documentation used in trade of goods and the standardization of data elements;~~
- ~~(c) to the extent practicable, to harmonize customs laboratories' methods and exchange of information and personnel between the customs laboratories;~~
- ~~(d) in the development of effective mechanisms for communicating with the trade and business communities; and~~
- ~~(e) in such other matters as the Parties may decide upon.~~

*October 19, 2009: EU proposes deletion*

*October 19, 2009: Agreed*

*October 19, 2009: The EU wants to ensure that these provisions do not duplicate those in the CCMAA, and suggests including, in place of the Article on cooperation, a reference to the CCMAA.*

*October 19, 2009: Canada and the EU agree to retain the original paragraphs 1 and 5.*

[Article X-X

Placeholder text: Reference to a possible Committee pending the outcome of the placement of the CETA committee structure for goods.]

*October 19, 2009: The EU also suggests including a bracketed placeholder provision on a committee pending the outcome of discussions on the structure of the agreement.*

*October 20, 2009: The Parties agree whether or not to include a committee in this chapter pending the committee structure of the agreement.*

*October 19, 2009: EU suggests, and Canada agrees, that it may be useful to include a reference in the joint report to Chiefs to authorized economic operators and the fact that this issue will be addressed under the CCMAA amendments but not referenced in the CETA.*

## RULES OF ORIGIN

### Article X-1: Originating Goods

Except as otherwise provided in this Chapter, a good shall originate in the territory of a Party where:

- (a) the good is wholly obtained or produced entirely in the territory of one or both of the Parties;

*October 23, 2009: The Parties agree that both have proposed equivalent .*

- (b) each of the non-originating materials used in the production of the good undergoes an applicable change in tariff classification as set out in Annex X.1 (Specific Rules of Origin) as a result of production occurring entirely in the territory of one or both of the Parties, or the good otherwise satisfies the applicable requirements of that Annex where no change in tariff classification is required, and the good satisfies all other applicable requirements of this Chapter;

*October 23, 2009: The Parties agree that more discussion is required on the concept of accumulation or bilateral cumulation. The Parties generally agree that the concept of change in tariff classification equates to sufficiently worked or processed products but that there will also be instances in which other requirements apply.*

- (c) the good is produced entirely in the territory of one or both of the Parties exclusively from originating materials; or

*October 23, 2009: EU to consult*

- (d) except as provided in Annex X.1 (Specific Rules of Origin) or except for a good of Chapter 39 or Chapter 50 through 63 of the Harmonized System,

- (i) the good is produced entirely in the territory of one or both of the Parties,
  - (ii) one or more of the non-originating materials used in the production of the good cannot satisfy the requirements set out in Annex X.1 (Specific Rules of Origin) because both the good and the non-originating materials are classified in the same subheading, or heading that is not further subdivided into subheadings,

- (iii) the value of the non-originating materials classified as or with the good does not exceed 65 per cent of the transaction value of the good, and
- (iv) the good satisfies all other applicable requirements of this Chapter.

*October 23, 2009: EU to consult*

**Equivalent EU TEXT:**

**Article 2: General requirements**

1. For the purpose of implementing this Agreement, the following products shall be considered as originating in the European Community:

- (a) products wholly obtained in the European Community within the meaning of Article 4;

- (b) products obtained in the European Community incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in the European Community within the meaning of Article 5;

2. For the purpose of implementing this Agreement, the following products shall be considered as originating in Canada:

- (a) products wholly obtained in Canada within the meaning of Article 4;

- (b) products obtained in Canada incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in Canada within the meaning of Article 5.

*October 23, 2009: The Parties note that whereas Canada uses the concept of a "free trade area" and therefore looks upon goods covered by the agreement as "CETA goods" the EU regards goods as being either EU goods or Canadian goods.*

**Equivalent EU TEXT:**

**Article 5: Sufficiently worked or processed products**

1. For the purposes of Article 2, products which are not wholly obtained are considered to be sufficiently worked or processed when the conditions set out in the list in Appendix II are fulfilled.

The conditions referred to above indicate, for all products covered by the Agreement, the working or processing which must be carried out on non-originating materials used in manufacturing and apply only in relation to such materials. NOTE: See CDA: Article X-9 (Materials Used in Production)



for the second of this paragraph.

*NOTE: See CDA: Article X-4 (De Minimis) for EU: Article 5.2*

3. Paragraphs 1 and 2 shall apply subject to the provisions of Article 6.

*October 23, 2009: Canada to consult*

## **EU TEXT**

### **Article 6: Insufficient working or processing**

1. Without prejudice to paragraph 2, the following operations shall be considered as insufficient working or processing to confer the status of originating products, whether or not the requirements of Article 5 are satisfied:

- (a) preserving operations to ensure that the products remain in good condition during transport and storage;
- (b) breaking-up and assembly of packages;
- (c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;
- (d) ironing or pressing of textiles;
- (e) simple painting and polishing operations;
- (f) husking, partial or total bleaching, polishing, and glazing of cereals and rice;
- (g) operations to colour or flavour sugar or form sugar lumps; partial or total milling of crystal sugar;
- (h) peeling, stoning and shelling, of fruits, nuts and vegetables;
- (i) sharpening, simple grinding or simple cutting;
- (j) sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles);
- (k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- (l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (m) simple mixing of products, whether or not of different kinds; mixing of sugar with any material;

(n) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;

(o) a combination of two or more operations specified in (a) to (n);

(p) slaughter of animals.

All operations carried out either in the European Community or in Canada on a given product shall be considered together when determining whether the working or processing undergone by that product is to be regarded as insufficient within the meaning of paragraph 1.

*October 23, 2009: Canada notes that it does not support the inclusion of this article as it believes these conditions can be covered in the product-specific rules of origin (PSRO). The Parties agree to review this list following the discussion of the PSROs.*

## Article X- 2: Value Test

1. Except as provided in paragraph 2, where the applicable rule of origin in Annex X.1 (Specific Rules of Origin) for the tariff provision under which a good is classified specifies a value test, the value test shall be satisfied provided the value of non-originating materials used in the production of the good does not exceed a given percentage of the transaction value of the good.

2. For purposes of a good of heading 87.01 through 87.08, at the choice of an exporter or a producer of such good, the value test shall be satisfied provided the value of non-originating materials used in the production of the good does not exceed a given percentage of either the transaction value or the net cost of the good.

3. The value of non-originating materials used by the producer in the production of a good shall not, for purposes of satisfying the value test under either paragraph 1 or 2, include the value of non-originating materials used to produce originating materials that are subsequently used in the production of the good.

*October 23, 2009: The Parties note that this same concept is found EU Article 5(1)*

4. ~~For purposes of paragraph 3, the value of non-originating materials in paragraphs 1 and 2 does not include:~~

~~(a) the value of any non-originating materials used by another producer to produce an originating material that is subsequently acquired and used in the production of the good by the producer of the good; or~~

~~(b) the value of non-originating materials used by the producer to produce an originating self-produced material.~~

*October 23, 2009: Deleted.*

5. The value of a self-produced material shall be:

- (a) the total cost incurred with respect to all goods produced by the producer of the good that can be reasonably allocated to that self-produced material; or
- (b) the sum of all costs that comprise the total cost incurred with respect to that self-produced material that can be reasonably allocated to that self-produced material.

*October 23, 2009: Canada to send additional information on this provision intersessionally.*

6. For purposes of calculating the net cost of a good under paragraph 2, the producer of the good may:

- (a) calculate the total cost incurred with respect to all goods produced by that producer, subtract any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, as well as non-allowable interest costs that are included in the total cost of all such goods, and then reasonably allocate the resulting net cost of those goods to the good;
- (b) calculate the total cost incurred with respect to all goods produced by that producer, reasonably allocate the total cost to the good, and then subtract any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs and non-allowable interest costs that are included in the portion of the total cost allocated to the good; or
- (c) reasonably allocate each cost that forms part of the total cost incurred with respect to the good so that the aggregate of these costs does not include any sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, or non-allowable interest costs.

*October 23, 2009: EU to consult*

7. For purposes of calculating the net cost of a good under paragraph 2, the producer may average its calculation over its fiscal year using any one of the following categories, on the basis of either all motor vehicles in the category or only those motor vehicles in the category that are exported to the territory of the other Party:

- (a) the same model line of motor vehicles in the same class of vehicles produced in the same plant in the territory of a Party;
- (b) the same model line of motor vehicles produced in the same plant in the territory of a Party;
- (c) the same model line of motor vehicles produced in the territory of a Party;
- (d) the same class of motor vehicles produced in the same plant in the territory of a Party; or

(e) any other category as the Parties may agree.

*October 23, 2009: EU to consult*

8. For purposes of calculating the net cost under paragraph 2 with respect to a good of headings 87.06 through 87.08 produced in the same plant, the producer may:

(a) average its calculation,

(i) over the fiscal year of the motor vehicle producer to whom the good is sold,

(ii) over any quarter or month, or

(iii) over the automotive materials producer's fiscal year, provided the good was produced during the fiscal year, quarter or month forming the basis for the calculation;

(b) calculate the average referred to in subparagraph (a) separately for any or all goods sold to one or more motor vehicle producers; or

(c) calculate the average in subparagraph (a) or (b) separately for those goods that are exported to the territory of the other Party.

*October 23, 2009: EU to consult*

### Article X-3: Accumulation

1. For purposes of determining whether a good is an originating good, the production of the good in the territory of one or both of the Parties by one or more producers shall, at the choice of the exporter or producer of the good for which preferential tariff treatment is claimed, be considered to have been performed in the territory of either of the Parties by that exporter or producer, provided that:

(a) all non-originating materials used in the production of the good satisfy the requirements set out in Annex X.1 (Specific Rules of Origin), entirely in the territory of one or both of the Parties; and

(b) the good satisfies all other applicable requirements of this Chapter.

*October 23, 2009: EU to consult*

2. Subject to paragraph 3, where each Party has a trade agreement that, as contemplated by the WTO Agreement, establishes or leads to the establishment of a free trade area with the same non-Party, the territory of that non-Party shall be deemed to form part of the territory of the free trade area established by this Agreement, for purposes of determining whether a good is an originating good under this Agreement.

## LIMITED

*Draft consolidated CETA text as at 13.1.10*

- (a) A Party shall give effect to paragraph 2 only once provisions with effect equivalent to paragraph 2 are in force between each Party and the non-Party, and upon agreement by the Parties on whether to limit such provisions to specified goods or under specified conditions.

*October 23, 2009: Canada to send a paper to the EU on cross-cumulation. EU to consult.*

### **Equivalent EU TEXT:**

#### **Article 3: Bilateral cumulation of origin**

1. Materials originating in the European Community shall be considered as materials originating in Canada when incorporated into a product obtained there. It shall not be necessary that such materials have undergone sufficient working or processing, provided they have undergone working or processing going beyond that referred to in Article 6.

2. Materials originating in Canada shall be considered as materials originating in the European Community when incorporated into a product obtained there. It shall not be necessary that such materials have undergone sufficient working or processing, provided they have undergone working or processing going beyond that referred to in Article 6.

*October 23, 2009: Canada to consult*

#### **Article X-4: De Minimis**

1. Except as provided in paragraphs 2 through 4, a good shall be considered to be an originating good if the value of all non-originating materials used in the production of the good that do not undergo an applicable change in tariff classification [C: or fulfill any other condition] set out in Annex X.1 (Specific Rules of Origin) is not more than 10 per cent of the transaction value of the good, provided that:

(a) if the rule of origin of Annex X.1 (Specific Rules of Origin) applicable to the good contains a percentage for the maximum value of non-originating materials, the value of such non-originating materials shall be included in calculating the value of non-originating materials; and

(b) the good satisfies all other applicable requirements of this Chapter.

*October 23, 2009: Canada proposes a revision of paragraph 1.*

### **Equivalent EU TEXT:**

#### **Article 5: Sufficiently worked or processed products**

1. For the purposes of Article 2, products which are not wholly obtained are considered to be sufficiently worked or processed when the conditions

set out in the list in Appendix II are fulfilled.

The conditions referred to above indicate, for all products covered by the Agreement, the working or processing which must be carried out on non-originating materials used in manufacturing and apply only in relation to such materials. It follows that if a product which has acquired originating status by fulfilling the conditions set out in the list is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it, and no account shall be taken of the non-originating materials which may have been used in its manufacture.

2. Notwithstanding paragraph 1, non-originating materials which, according to the conditions set out in the list, should not be used in the manufacture of a product may nevertheless be used, provided that:

- (a) their total value does not exceed 10 per cent of the ex-works price of the product;
- (b) any of the percentages given in the list for the maximum value of non-originating materials are not exceeded through the application of this paragraph.

This paragraph shall not apply to products falling within Chapters 50 to 63 of the Harmonized System.

3. Paragraphs 1 and 2 shall apply subject to the provisions of Article 6.

2. Except as provided in Annex X.1 (Specific Rules of Origin), paragraph 1 does not apply to a non-originating material used in the production of a good of Chapters 1 through 21 of the Harmonized System unless the non-originating material is provided for in a different subheading from the good for which origin is being determined under this Article.

3. A good of any of Chapters 50 through 60 of the Harmonized System that does not originate because certain non-originating yarns used in the production of the good do not fulfil the requirements set out for that good in Annex X.1 (Specific Rules of Origin), shall nonetheless be considered to originate if the total weight of all such yarns does not exceed 10 per cent of the total weight of the good.

4. A good of any of Chapters 61 through 63 of the Harmonized System that does not originate because certain non-originating yarns or fabrics used in the production of the component of the good that determines the tariff classification of that good do not fulfil the requirements set out for that good in Annex X.1 (Specific Rules of Origin), shall nonetheless be considered to originate if the total weight of all such yarns or fabrics in that component does not exceed 10 per cent of the total weight of that component.

*October 23, 2009: Parties to discuss.*

#### **Article X-5: Fungible Materials and Goods**

For purposes of determining whether a good is an originating good:

(a) where originating and non-originating fungible materials are used in the production of a good, the determination of whether the materials are originating materials may be made in accordance with any of the inventory management methods recognized in, or otherwise accepted by, the Generally Accepted Accounting Principles of the Party in which the production is performed; and

(b) where originating and non-originating fungible goods are physically combined or mixed in inventory in a Party and exported in the same form to another Party, the determination of whether the good is an originating good may be made in accordance with any of the inventory management methods recognized in, or otherwise accepted by, the Generally Accepted Accounting Principles of the Party from which the good is exported.

*October 23, 2009: The Parties note that this provision equates to the EU article on Accounting Segregation found in other agreements. The EU will send Canada text on this concept. Canada notes that its proposed text covers both fungible materials and goods. EU to consult on the concept of fungible goods.*

#### **EQUIVALENT EU TEXT** (To be added to the EU draft)

##### **Accounting segregation**

1. Where considerable cost or material difficulties arise in keeping separate stocks of originating and non-originating materials which are identical and interchangeable, the customs authorities may, at the written request of those concerned, authorise the so-called 'accounting segregation' method to be used for managing such stocks.
2. This method must be able to ensure that, for a specific reference-period, the number of products obtained which could be considered as 'originating' is the same as that which would have been obtained if there had been physical segregation of the stocks.
3. The customs authorities may grant such authorisation, subject to any conditions deemed appropriate.
4. This method is recorded and applied on the basis of the general accounting principles applicable in the Party where the product was manufactured.
5. The beneficiary of this facilitation may make out or apply for proofs of origin, as the case may be, for the quantity of products which may be considered as originating. At the request of the customs authorities, the beneficiary shall provide a statement of how the quantities have been managed.
6. The customs authorities shall monitor the use made of the authorisation and may withdraw it at any time whenever the beneficiary makes improper use of the authorisation in any manner whatsoever or fails to fulfil any of the other conditions laid down in this Protocol.

*November 26, 2009: New text inserted by the EU. EU to consult on the applicability of this provision to (final) goods. Canada to review the EU proposal.*

**Article X-6: Sets or Assortments of Goods**

1. Except as provided in Annex X.1 (Specific Rules of Origin), a set, as referred to in General Rule 3 of the Harmonized System, or assortment of goods shall be considered originating, provided that:

(a) all the component goods in the set or assortment, packaging materials and containers, are originating; or

(b) where the set or assortment contains non-originating component goods, packaging materials or containers, the value of the non-originating component goods, packaging materials and containers for the set or assortment does not exceed 50 per cent of the transaction value of the set or assortment.

1. The value of non-originating component goods, packaging materials and containers shall be calculated in the same manner as the value of non-originating materials.

*October 23, 2009: Canada notes that this provision does not cover sets classified as such in the HS. Canada also notes that its proposal includes packaging materials and containers. The EU proposal references "products" and Canada questions if this also includes the packaging, for example a wooden box included with a set of carving knives and other utensils of Chapter 82. Canada indicates that it has flexibility on the applicable per cent. EU to consult.*

**Equivalent EU TEXT:****Article 9: Sets**

Sets, as defined in General Rule 3 of the Harmonized System, shall be regarded as originating when all component products are originating. Nevertheless, when a set is composed of originating and non-originating products, the set as a whole shall be regarded as originating, provided that the value of the non-originating products does not exceed 15 per cent of the ex-works price of the set.

*October 23, 2009: See note above.*

**Article X-7: Accessories, Spare Parts and Tools**

Accessories, spare parts and tools delivered with a good that form part of the good's standard accessories, spare parts or tools, shall be considered as originating if the good originates and shall be disregarded in determining whether all the non-originating materials used in the production of the good satisfy the requirements set out in Annex X.1 (Specific Rules of Origin) provided that:

- (a) the accessories, spare parts and tools are not invoiced separately from the good; and



- (b) the quantities and value of the accessories, spare parts or tools are customary for the good.

*October 23, 2009: Canada explains that an accessory, spare part or tool, shipped with a good is disregarded when determining the origin of the good. For example an "allen" key would be disregarded when included with a piece of furniture or a jack would be disregarded in the case of a car.*

**Equivalent EU TEXT:**

**Article 8: Accessories, spare parts and tools**

Accessories, spare parts and tools dispatched with a piece of equipment, machine, apparatus or vehicle, which are part of the normal equipment and included in the price thereof or which are not separately invoiced, shall be regarded as one with the piece of equipment, machine, apparatus or vehicle in question.

*October 23, 2009: The EU explains that a accessory, spare part or tool shipped with a good is counted when determining the origin of the good. For example an "allen" key would be counted when included with a piece of furniture or a jack would be counted in the case of a car.*

*October 23, 2009: The Parties note that their different approaches relate directly to their differing approaches to PSROs and that their respective approaches to accessories etc. fits with their approaches to PSROs.*

**Article X-8: Indirect Materials**

An indirect material shall be considered as originating without regard to where it is produced.

*October 23, 2009: Canada notes that it has, in the past, used text similar to that proposed by the EU and that it has the flexibility to do so again.*

**Equivalent EU TEXT:**

**Article X10: Neutral elements**

In order to determine whether a [EU: product] originates, it shall not be necessary to determine the origin of the following which might be used in its [EU: manufacture] [C: production]:

- (a) energy and fuel;
- (b) plant and equipment;
- (c) machines and tools;
- (d) [EU: goods] materials which do not enter and which are not intended

to enter into the final composition of the [EU:product].

*November 26, 2009: Canada can agree with the EU proposal and therefore agrees to delete its proposal on indirect materials and the associated definition. EU agrees to replace goods with materials in subparagraph (d).*

#### **Article X-9: Materials Used In Production**

1. For greater certainty, if a material is considered to be originating, then no account shall be taken of the non-originating materials contained therein when that material is subsequently used in the production of another good.
2. For purposes of determining the origin of a good, a producer of a good may designate any self-produced material as a material to be taken into account as an originating or non-originating material, as the case may be, in determining whether the good satisfies the applicable requirements of the rules of origin.

*November 26, 2009: Canada is currently reviewing paragraph 2. The EU believes Canada's paragraph 2 could lead to misinterpretation and would prefer that it be deleted.*

#### **Equivalent EU TEXT:**

#### **Article 5: Sufficiently worked or processed products**

(...) It follows that if a product which has acquired originating status by fulfilling the conditions set out in the list is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it, and no account shall be taken of the non-originating materials which may have been used in its manufacture. (...)

#### **Article X-10: Packaging Materials and Containers for Retail Sale**

Except as provided for in Article X-6 of this Chapter and in Annex X.1 (Specific Rules of Origin), packaging materials and containers in which a good is packaged for retail sale shall be disregarded in determining:

- (a) whether all the non-originating materials undergo the applicable requirements set out in Annex X.1 (Specific Rules of Origin); or
- (b) whether the good meets the requirements established in subparagraph (a) or (c) of Article X-1.

*November 26, 2009: Canada and the EU have different perspectives on this issue. The EU notes that it is concerned about the treatment of high value packaging materials, such as a perfume bottle and asks how Canada would treat these cases. Canada says that it believes it is easier for traders and producers to disregard packaging for retail sale. The EU also asks how Canada would treat the case of juice contained in a thermos bottle where the good is classified as juice.*

**Article X-11: Packing Materials and Containers for Shipment**

Packing materials, containers, pallets or similar articles, in which a good is packed for shipment shall be disregarded in determining whether that good is originating.

*November 26, 2009: The EU and Canada agree on the principle this provision on disregarding packing. EU to send Canada information on domestic regulations covering this issue.*

**Equivalent EU TEXT:****Article 7: Unit of qualification**

NOTE: See CDA: Article X-13 (Interpretation and Application) for EU: Article 7.1

2. Where, under General Rule 5 of the Harmonized System, packaging is included with the product for classification purposes, it shall be included for the purposes of determining origin.

**Article X-12: Transshipment**

A good shall not be considered to be originating by reason of having undergone production that satisfies the requirements of Article X-1 if, subsequent to that production, the good:

- (a) undergoes further production or any other operation outside the territories of the Parties, other than unloading, reloading or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Party; or
- (b) does not remain under customs control while outside the territories of the Parties.

*November 26, 2009: The Parties note that there do not appear to be significant substantive differences between the proposed texts on transshipment/direct transport. Canada notes that the term "consignment" has some different connotations in Canada. The Parties agree to review these texts and seek a creative text to meet the interests of both sides. Canada indicates that it agrees in principle with the reference to pipelines.*

**Equivalent EU TEXT:**

**Article 12: Direct transport**

1. The preferential treatment provided for under this Agreement applies only to products, satisfying the requirements of this Annex, which are transported directly between the European Community and Canada. However, products constituting one single consignment may be transported through other territories with, should the occasion arise, trans shipment or temporary warehousing in such territories, provided that they remain under the surveillance of the customs authorities in the country of transit or warehousing and do not undergo operations other than unloading, reloading or any operation designed to preserve them in good condition.

Originating products may be transported by pipeline across territory other than that of the European Community or Canada.

2. Evidence that the conditions set out in paragraph 1 have been fulfilled shall be supplied to the customs authorities of the importing country by the production of:

- (a) a single transport document covering the passage from the exporting country through the country of transit; or
- (b) a certificate issued by the customs authorities of the country of transit:
  - (i) giving an exact description of the products,
  - (ii) stating the dates of unloading and reloading of the products and, where applicable, the names of the ships, or the other means of transport used, and
  - (iii) certifying the conditions under which the products remained in the transit country; or
- (c) failing these, any substantiating documents.

**Article X-13: Interpretation and Application**

For purposes of this Chapter:

- (a) the basis for tariff classification in this Chapter is the Harmonized System;
- (b) where applying Article X-1(d), the determination of whether a heading or subheading under the Harmonized System provides for both a good and the materials that are used in the production of the good shall be made on the basis of the nomenclature of the heading or subheading and the relevant Section or Chapter Notes, in accordance with the General Rules for the Interpretation of the Harmonized System; and
- (c) all costs referred to in this Chapter shall be recorded and maintained in accordance with the Generally Accepted Accounting

Principles applicable in the territory of the Party in which the good is produced.

*November 26, 2009: Canada notes that the reference to GAAP is particularly relevant in connection with net cost calculations. The EU is reviewing the concept of net cost and in this context will look at the need for the GAAP reference. EU to consult with its auto industry on the net cost proposal.*

**Equivalent EU TEXT:**

**Article 7: Unit of qualification**

1. The unit of qualification for the application of the provisions of this Annex shall be the particular product which is considered as the basic unit when determining classification using the nomenclature of the Harmonized System.

It follows that:

- (a) when a product composed of a group or assembly of articles is classified under the terms of the Harmonized System in a single heading, the whole constitutes the unit of qualification;
- (b) when a consignment consists of a number of identical products classified under the same heading of the Harmonized System, each product must be taken individually when applying the provisions of this Annex.

NOTE: See CDA: Article X-11 (Packing Materials and Containers for Shipment) for EU: Article 7.2

*November 26, 2009: Canada has no objection to the principles embodied in the EU Article 7 proposal.*

**Article X-14: Consultation and Modifications**

1. The Parties shall consult regularly to ensure that this Chapter is administered effectively, uniformly and consistently with the spirit and objectives of this Agreement, and shall cooperate in the administration of this Chapter in accordance with Chapter X (Customs Procedures).
2. A Party that considers that this Chapter requires modification to take into account developments in production processes or other matters may submit a proposed modification along with supporting rationale and any studies to the other Party for consideration and any appropriate action under Chapter X (National Treatment and Market Access for Goods).

**Equivalent EU TEXT:****Article 37: Amendments to this Annex**

The [Association Committee] may decide to amend the provisions of this Annex.

*November 26, 2009: The determination of the committees to be established under this agreement will come later in the negotiations. In principle the Parties agree that a provision is needed to allow for the amendment of the rules of origin.*

**EU TEXT:****Article 11: Principle of territoriality**

1. The conditions set out in Title II relating to the acquisition of originating status must be fulfilled without interruption in the European Community or in Canada.

2. If originating goods exported from the European Community or from Canada to another country return, they must be considered as non-originating, unless it can be demonstrated to the satisfaction of the customs authorities that:

- (a) the returning goods are the same as those exported; and
- (b) they have not undergone any operation beyond that necessary to preserve them in good condition while in that country or while being exported.

*November 26, 2009: Canada to consult on the issue of returned goods.*

3. The acquisition of originating status in accordance with the conditions set out in Title II shall not be affected by working or processing done outside the European Community or Canada on materials exported from the European Community or from Canada and subsequently re-imported there, provided:

- (a) the said materials are wholly obtained in the European Community or in Canada or have undergone working or processing beyond the operations referred to in Article 6 prior to being exported; and
- (b) it can be demonstrated to the satisfaction of the customs authorities that:
  - i) the re-imported goods have been obtained by working or processing the exported materials; and
  - ii) the total added value acquired outside the European Community or Canada by applying the provisions of this Article does not exceed 10 per cent of the ex-works price

of the end product for which originating status is claimed.

4. For the purposes of paragraph 3, the conditions for acquiring originating status set out in Title II shall not apply to working or processing done outside the European Community or Canada. But where, in the list in Appendix II, a rule setting a maximum value for all the non-originating materials incorporated is applied in determining the originating status of the end product, the total value of the non-originating materials incorporated in the territory of the party concerned, taken together with the total added value acquired outside the European Community or Canada by applying the provisions of this Article, shall not exceed the stated percentage.

5. For the purposes of applying the provisions of paragraphs 3 and 4, 'total added value' shall be taken to mean all costs arising outside the European Community or Canada, including the value of the materials incorporated there.

6. The provisions of paragraphs 3 and 4 shall not apply to products which do not fulfil the conditions set out in the list in Appendix II or which can be considered sufficiently worked or processed only if the general tolerance fixed in Article 5(2) is applied.

7. The provisions of paragraphs 3 and 4 shall not apply to products of Chapters 50 to 63 of the Harmonized System

8. Any working or processing of the kind covered by the provisions of this Article and done outside the European Community or Canada shall be done under the outward processing arrangements, or similar arrangements.

*November 26, 2009: The EU explains that subparagraphs 3-8 relate to some earlier relationships with countries that were not EU member states, and may no longer be needed. Canada notes that it does not provide for outward processing in the context of its FTAs as geography limits Canada's ability to take advantage of such programs.*

**EU TEXT:**

**Article 13: Exhibitions**

1. Originating products, sent for exhibition in a country other than the European Community and Canada and sold after the exhibition for importation in the European Community or in Canada shall benefit on importation from the provisions of this Agreement provided it is shown to the satisfaction of the customs authorities that:

- (a) an exporter has consigned these products from the European Community or from Canada to the country in which the exhibition is held and has exhibited them there;
- (b) the products have been sold or otherwise disposed of by that exporter to a person in the European Community or in Canada;

(c) the products have been consigned during the exhibition or immediately thereafter in the state in which they were sent for exhibition; and

(d) the products have not, since they were consigned for exhibition, been used for any purpose other than demonstration at the exhibition.

2. A proof of origin must be issued or made out in accordance with the provisions of Title V and submitted to the customs authorities of the importing country in the normal manner. The name and address of the exhibition must be indicated thereon. Where necessary, additional documentary evidence of the conditions under which they have been exhibited may be required.

3. Paragraph 1 shall apply to any trade, industrial, agricultural or crafts exhibition, fair or similar public show or display which is not organised for private purposes in shops or business premises with a view to the sale of foreign products, and during which the products remain under customs control.

*November 26, 2009: Canada agreed to a similar provision in CEFTA and will consult on this proposal.*

#### **Article X-15: Definitions**

For purposes of this Chapter:

**aquaculture** means the farming of aquatic organisms, including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production, such as regular stocking, feeding or protection from predators;

*November 26, 2009: The EU may have included a similar definition in another agreement.*

**customs value** means the value as determined in accordance with the WTO Customs Valuation Agreement;

*November 26, 2009: In the context of NTMA discussions agreement has been reached to use the longer, more formal reference to the CVA.*

#### **Equivalent EU TEXT:**

(e) "customs value" means the value as determined in accordance with the 1994 Agreement on implementation of Article VII of the General



Agreement on Tariffs and Trade (WTO Agreement on customs valuation);

**fungible materials** or **fungible goods** means materials or goods that are interchangeable for commercial purposes and whose properties are essentially identical;

*November 26, 2009: The Parties agree with respect to the concept of fungible materials, but the EU does not agree with the concept of fungible goods.*

**Generally Accepted Accounting Principles** means the principles used in the territory of each Party that provide substantial authorized support with regard to the recording of income, costs, expenses, assets and liabilities involved in the disclosure of information and preparation of financial statements. These principles may be broad guidelines of general application, as well as those standards, practices and procedures usually employed in accounting;

*November 26, 2009: The Parties agree in principle to this definition.*

**good** means any merchandise, product, article or material;

***Equivalent EU TEXT:***

(c) "product" means the product being manufactured, even if it is intended for later use in another manufacturing operation;

(d) "goods" means both materials and products;

*November 26, 2009: Canada questions the need for both definitions. Canada notes that its EFTA text uses only the term product and proposes that the definition of product contained therein be used in this agreement.*

**goods wholly obtained or produced entirely in the territory of one or both of the Parties** means:

***Equivalent EU TEXT:***

**Article 4: Wholly obtained products**

*November 26, 2009: The EU notes its preference for a stand-alone provision on wholly obtained goods. Canada has followed this practice in the past and can do so again.*

1. The following shall be considered as wholly obtained in the European Community or in Canada:

- (a) minerals and other non-living natural resources extracted in or taken from the territory of one or both of the Parties;

***Equivalent EU TEXT:***

- (a) mineral products extracted from their soil or from their seabed;
- (b) plants and plant products harvested or gathered in the territory of one or both of the Parties;

***Equivalent EU TEXT:***

- (b) vegetable products harvested there;
- (c) live animals born and raised in the territory of one or both of the Parties;

***Equivalent EU TEXT:***

- (c) live animals born and raised there;
- (d) goods obtained from live animals in the territory of one or both of the Parties;

***Equivalent EU TEXT:***

- (d) products from live animals raised there;
- (e) goods obtained from hunting, trapping, fishing or aquaculture in the territory of one or both of the Parties;

***Equivalent EU TEXT:***

- (e) (i) products obtained by hunting or fishing conducted there;

- (ii) products of aquaculture, including mariculture, where the fish are born and raised there;

*November 26, 2009: Canada notes that eggs, larvae, elvers etc need not be "born" in the territory. The EU notes that this could be a problem. EU to consult with their Maritime Directorate and believes that the concern applies to all species. Canada to consult with Dept. of Fisheries and Oceans officials. The EU agrees to delete "including mariculture".*

- (f) fish, shellfish and other marine life taken from the high seas and the Area as defined in Article 1(1) of the United Nations Convention on the Law of the Sea, by a vessel registered, recorded or listed with a Party, or leased by a company established in the territory of a Party, and entitled to fly its flag;

**Equivalent EU TEXT:**

- (f) products of sea fishing and other products taken from the sea outside the territorial waters of the European Community or of Canada by their vessels;

- (g) goods produced on board a factory ship from the goods referred to in subparagraph (f), provided such factory ship is registered, recorded or listed with a Party, or leased by a company established in the territory of a Party, and entitled to fly its flag;

**Equivalent EU TEXT:**

- (g) products made aboard their factory ships exclusively from products referred to in (f);

- (h) goods, other than fish, shellfish and other marine life, taken or extracted from the Area as defined in Article 1(1) of the United Nations Convention on the Law of the Sea, by a vessel registered, recorded or listed with a Party and entitled to fly its flag, or by a Party or a person of a Party, provided that Party or person of a Party has rights to exploit such seabed, subsoil or ocean floor;

**Equivalent EU TEXT:**

- (j) products extracted from marine soil or subsoil outside their territorial waters provided that they have sole rights to work that soil or subsoil;

- (i) goods taken from outer space, provided they are obtained by a Party or a person of a Party and not processed in a non-Party;

- (j) waste and scrap derived from production in the territory of one or both of the Parties;

**Equivalent EU TEXT:**

(i) waste and scrap resulting from manufacturing operations conducted there;

(k) components and raw materials recovered from used goods collected in the territory of one or both of the Parties, provided the goods are fit only for such recovery; and

**Equivalent EU TEXT:**

(h) used articles collected there fit only for the recovery of raw materials, including used tyres fit only for retreading or for use as waste;

(l) goods produced in the territory of one or both of the Parties exclusively from goods referred to in subparagraphs (a) through (k), or from their derivatives, at any stage of production;

**Equivalent EU TEXT:**

(k) goods produced there exclusively from the products specified in (a) to (j).

**EU TEXT:**

2. The terms 'their vessels' and 'their factory ships' in paragraph 1(f) and (g) shall apply only to vessels and factory ships:

(a) which are registered in a Member State of the European Community or in Canada;

(b) which sail under the flag of a Member State of the European Community or of Canada;

(c) which meet one of the following conditions:

(i) they are at least 50% owned by nationals of a Member State of the European Community or of Canada; or

(ii) they are owned by companies

-which have their head office and their main place of business in a Member State of the European Community or of Canada, and

-which are at least 50% owned by a Member State of the European Community or of Canada, public entities or nationals of those States;

and

- (d) of which at least 75% of the crew are nationals of a Member State of the European Community or of Canada.

~~indirect material~~ means a good used in the production, testing or inspection of a good but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment associated with the production of a good, including:

-

- ~~(a) fuel and energy;~~
- ~~(b) tools, dies and moulds;~~
- ~~(c) spare parts and materials used in the maintenance of equipment and buildings;~~
- ~~(d) lubricants, greases, compounding materials and other materials used in the production or used to operate equipment and buildings;~~
- ~~(e) gloves, glasses, footwear, clothing, safety equipment and supplies;~~
- ~~(f) equipment, devices, and supplies used for testing or inspecting the goods;~~
- ~~(g) catalysts and solvents; and~~
- ~~(h) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;~~

*November 26, 2009: The EU provides a similar "definition" in the context of their proposed article on neutral elements. Canada agrees to delete this definition and to accept the EU proposal on "neutral elements."*

**listed with a Party** means a foreign registered vessel bare-boat chartered to a Canadian citizen or a permanent resident or a Canadian corporation which is listed in the Canadian Register of Ships for the duration of the charter and whose registration in the foreign country is suspended for the duration of the charter;

*November 26, 2009: Canada explains the need for this term and will send the EU a copy of or link to the Canada Shipping Act, 2001.*

**material** means a good that is used in the production of another good, and includes a part or an ingredient;

#### **Equivalent EU TEXT:**

- (b) "material" means any ingredient, raw material, component or part, etc., used in the manufacture of the product;

*November 26, 2009: The Parties have the same objective, while noting differences over the terms manufacture and production.*

## LIMITED

*Draft consolidated CETA text as at 13.1.10*

**net cost** means total cost minus sales promotion, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs that are included in the total cost;

*November 26, 2009: Discussion is deferred as this term is associated with net cost.*

**non-allowable interest costs** means interest costs incurred by a producer that exceed 700 basis points above the applicable national government interest rate identified for comparable maturities;

*November 26, 2009: Discussion is deferred as this term is associated with net cost.*

**non-originating good or non-originating material** means a good or material that does not qualify as originating under this Chapter;

**other costs** means all costs recorded on the books of the producer that are not product costs or period costs;

*November 26, 2009: Discussion is deferred as this term is associated with net cost.*

**period costs** means those costs other than product costs that are expensed in the period in which they are incurred, including selling expenses and general and administrative expenses;

*November 26, 2009: Discussion is deferred as this term is associated with net cost.*

**product costs** means those costs that are associated with the production of a good and include the value of materials, direct labour costs, and direct overhead;

*November 26, 2009: Discussion is deferred as this term is associated with net cost.*

**producer** means a person who grows, mines, raises, harvests, fishes, traps, hunts, manufactures, processes, assembles or disassembles a good;

**production** means growing, mining, raising, harvesting, fishing, trapping, hunting, manufacturing, processing, assembling or disassembling a good;

### ***Equivalent EU TEXT:***

- (a) "manufacture" means any kind of working or processing, including assembly or specific operations;

*November 26, 2009: EU to consult on the term "manufacture" and Canada's preference for "production".*

**reasonably allocate** means to apportion in a manner appropriate to the circumstances;

*November 26, 2009: Discussion is deferred as this term is associated with net cost.*

**royalties** means payments of any kind, including payments under technical assistance or similar agreements, made as consideration for the use or right to use any copyright, literary, artistic, or scientific work, patent, trademark, design, model, plan, secret formula or process, excluding those payments under technical assistance or similar agreements that can be related to specific services such as:

- (a) personnel training, without regard to where performed; and
- (b) if performed in the territory of one or both of the Parties, engineering, tooling, die-setting, software design and similar computer services, or other services;

*November 26, 2009: Discussion is deferred as this term is associated with net cost.*

**sales promotion, marketing and after-sales service costs** means the following costs related to sales promotion, marketing and after-sales service:

- (a) sales and marketing promotion; media advertising; advertising and market research; promotional and demonstration materials; exhibits; sales conferences, trade shows and conventions; banners; marketing displays; free samples; sales, marketing and after-sales service literature (product brochures, catalogues, technical literature, price lists, service manuals, sales aid information); establishment and protection of logos and trademarks; sponsorships; wholesale and retail restocking charges; entertainment;
- (b) sales and marketing incentives; consumer, retailer or wholesaler rebates; merchandise incentives;
- (c) salaries and wages, sales commissions, bonuses, benefits (for example, medical, insurance, pension), travelling and living expenses, and membership and professional fees for sales promotion, marketing and after-sales service personnel;
- (d) recruiting and training of sales promotion, marketing and after-sales service personnel, and after-sales training of customers' employees, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;
- (e) product liability insurance;
- (f) office supplies for sales promotion, marketing and after-sales service of goods, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;
- (g) telephone, mail and other communications, where such costs are identified separately for sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer;
- (h) rent and depreciation of sales promotion, marketing and after-sales service offices and distribution centres;
- (i) property insurance premiums, taxes, cost of utilities, and repair and maintenance of sales promotion, marketing and after-sales service offices and distribution centres, where such costs are identified separately for

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sales promotion, marketing and after-sales service of goods on the financial statements or cost accounts of the producer; and

(j) payments by the producer to other persons for warranty repairs;

*November 26, 2009: Discussion is deferred as this term is associated with net cost.*

**self-produced material** means a material that is produced by a producer of a good and used in the production of that good;

**shipping and packing costs** means the costs incurred in packing a good for shipment and shipping the good from the point of direct shipment to the buyer, excluding costs of preparing and packaging the good for retail sale;

*November 26, 2009: Discussion is deferred as this term is associated with net cost.*

**tariff provision** means a chapter, heading or subheading of the Harmonized System;

### ***Equivalent EU TEXT:***

(i) "chapters" and "headings" mean the chapters and the headings (four digit codes) used in the nomenclature which makes up the Harmonized Commodity Description and Coding System, referred to in this Annex as "the Harmonized System" or "HS";

*November 26, 2009: The EU notes that it does not normally draft PSROs at the subheading level.*

**total cost** means all product costs, period costs and other costs incurred in the territory of one or both of the Parties;

*November 26, 2009: Discussion is deferred as this term is associated with net cost.*

**transaction value** means the price actually paid or payable for a good or material with respect to a transaction of the producer of the good, adjusted in accordance with the principles of paragraphs 1, 3 and 4 of Article 8 of the WTO Customs Valuation Agreement to include, *inter alia*, such costs as commissions, production assists, royalties or license fees;

### ***Equivalent EU TEXT:***

(f) "ex-works price" means the price paid for the product ex-works to the manufacturer in the European Community or in Canada in whose undertaking the last working or processing is carried out, provided the price includes the value of all the materials used, minus any internal taxes which are, or may be, repaid when the product obtained is exported;



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**transaction value of the good**, including for purposes of this definition sets or assortments of goods of Article X-6 of this Chapter and of Annex X.1 (Specific Rules of Origin), means:

- (a) the transaction value of a good when sold by the producer at the place of production; or
- (b) the customs value of that good;

and adjusted, if necessary, to exclude any costs incurred subsequent to the good leaving the place of production, such as freight and insurance;

**value of non-originating materials** means:

- (a) the transaction value or the customs value of the materials at the time of their importation into a Party, adjusted, if necessary, to include freight, insurance, packing and all other costs incurred in transporting the materials to the place of importation; or
- (b) in the case of domestic transactions, the value of the materials determined in accordance with the principles of the World Trade Organization's (WTO) Customs Valuation Agreement in the same manner as international transactions, with such modifications as may be required by the circumstances.

### ***Equivalent EU TEXT:***

- (g) "value of materials" means the customs value at the time of importation of the non-originating materials used, or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in the European Community or in Canada;

### ***Equivalent EU TEXT:***

#### **Article 1: Definitions**

For the purposes of this Annex:

- ~~(h) "value of originating materials" means the value of such materials as defined in (g), applied mutatis mutandis;~~

*November 26, 2009: The EU says it does not need this definition. Canada agrees.*

- (j) "classified" refers to the classification of a product or material under a particular heading;

*November 26, 2009: The necessity of this definition will depend upon the drafting of the text.*

- (k) "consignment" means products which are either sent simultaneously

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from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;

*November 26, 2009: The necessity of this definition will depend upon the drafting of the text. Canada to consult.*

(l) "territories" includes territorial waters.

*November 26, 2009: Canada notes that territory will be defined in the Institutional Chapter.*

### **EU TEXT:**

## **TITLE VII CEUTA AND MELILLA**

### **Article 35: Application of this Annex**

1. The term "European Community" used in Article 2 does not cover Ceuta and Melilla.
2. Products originating in Canada, when imported into Ceuta or Melilla, shall enjoy in all respects the same customs regime as that which is applied to products originating in the customs territory of the European Community under Protocol 2 of the Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities. Canada shall grant to imports of products covered by the Agreement and originating in Ceuta and Melilla the same customs regime as that which is granted to products imported from and originating in the European Community.
3. For the purpose of the application of paragraph 2 concerning products originating in Ceuta and Melilla, this Annex shall apply *mutatis mutandis* subject to the special conditions set out in Article 36.

### **EU TEXT:**

### **Article 36: Special conditions**

1. Provided that they have been transported directly in accordance with the provisions of Article 12, the following shall be considered as:
  - (1) products originating in Ceuta and Melilla:
    - (a) products wholly obtained in Ceuta and Melilla;
    - (b) products obtained in Ceuta and Melilla in the manufacture of which

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products other than those referred to in (a) are used, provided that:

(i) the said products have undergone sufficient working or processing within the meaning of Article 5; or that

(ii) those products are originating in Canada or in the European Community, provided that they have been submitted to working or processing which goes beyond the operations referred to in Article 6.

(2) products originating in Canada:

(a) products wholly obtained in Canada;

(b) products obtained in Canada, in the manufacture of which products other than those referred to in (a) are used, provided that:

(i) the said products have undergone sufficient working or processing within the meaning of Article 5; or that

(ii) those products are originating in Ceuta and Melilla or in the European Community, provided that they have been submitted to working or processing which goes beyond the operations referred to in Article 6.

2. Ceuta and Melilla shall be considered as a single territory.

3. The exporter or his authorised representative shall enter "Canada" and "Ceuta and Melilla" in Box 2 of movement certificates EUR.1 or on invoice declarations. In addition, in the case of products originating in Ceuta and Melilla, this shall be indicated in Box 4 of movement certificates EUR.1 or on invoice declarations.

4. The Spanish customs authorities shall be responsible for the application of this Annex in Ceuta and Melilla.

*November 26, 2009: The EU notes that these are autonomous cities located in northern Africa but are not part of the EU Customs Union. The EU will send a paper to Canada on this issue.*

## TITLE [ ]

**[EU: PROOF OF ORIGIN] [C: ORIGIN PROCEDURES]**

## ARTICLE 15: [EU: GENERAL REQUIREMENTS] [C: PROOF OF ORIGIN]

1. [EU: Products originating in the EC Party shall, on importation into Canada and products originating in Canada shall, on importation into the EC Party benefit from preferential tariff treatment of this Agreement on the basis of a declaration, subsequently referred to as the “origin declaration”, made by the exporter on an invoice, a delivery note or any other commercial document which describes the products concerned in sufficient detail to enable them to be identified. The different linguistic versions of the text of the origin declaration appear in Annex [...].]

[C: Products originating in the EC Party shall, on importation into Canada and products originating in Canada shall, on importation into the EC Party benefit from preferential tariff treatment in accordance with this Agreement on the basis of an origin declaration.]

2. [EU: Notwithstanding paragraph 1, originating products within the meaning of this Annex shall, in the cases specified in Article *[provision on exemptions from the proof of origin]*, benefit from preferential tariff treatment of this Agreement without it being necessary to submit any of the documents referred to in paragraph 1.]

## ARTICLE 16: [EU: CONDITIONS FOR MAKING OUT AN ORIGIN DECLARATION] [C: OBLIGATIONS REGARDING EXPORTATIONS]

1. [EU: An origin declaration as referred to in Article *[provision on proof of origin]* of this Annex may be made out by an approved exporter within the meaning of Article *[provision on approved exporter]*.]

[C: An exporter of an originating product, shall, for the purposes of obtaining preferential tariff treatment for that product on importation into the other Party, complete an origin declaration for that product in a linguistic version provided in Appendix \_\_\_\_.

The origin declaration may be provided on an invoice or any other document that describes the originating product in sufficient detail to enable its identification.

An origin declaration may be completed by an exporter for multiple shipments of identical originating products to the same importer in the territory of another Party that take place within a period not exceeding 12 months as specified by the exporter in that declaration.]

2. [EU: Without prejudice to paragraph 3, an origin declaration may be made out if the products concerned can be considered as products originating in the EC Party or in Canada and fulfil the other requirements of this Annex.

3. The exporter making out an origin declaration shall be prepared to submit at any time, at the request of the customs authorities of the exporting Party, all appropriate documents proving the originating status of the products concerned including statements from the suppliers or producers in accordance with domestic legislation, as well as the fulfilment of the other requirements of this Annex.]

[C: An exporter that has completed an origin declaration shall, on request of the customs administration of the Party of export, provide to that administration a copy of the origin declaration and all documents supporting the originating status of each product to which the origin declaration applies.]

4. [EU: An origin declaration shall be made out by the exporter by typing, stamping or printing on the invoice, the delivery note or another commercial document, the declaration or the text of which appears in Annex [...], using one of the linguistic versions set out in that Annex and in accordance with the provisions of the domestic law of the exporting Party. If the declaration is handwritten, it shall be written in ink in capital characters.

5. Origin declarations shall bear the original signature of the exporter in manuscript. However, an approved exporter within the meaning of Article [provision on approved exporter] shall not be required to sign such declarations provided that he gives the customs authorities of the exporting Party a written undertaking that he accepts full responsibility for any origin declaration which identifies him as if it had been signed in manuscript by him.

6. An origin declaration may be made out by the exporter when the products to which it relates are exported, or after exportation on condition that it is presented in the importing Party no longer than two years or the period specified in the legislation of the importing Party after the importation of the products to which it relates.]

7. An exporter who has completed [EU: and signed] an origin declaration that has reason to believe that the declaration contains incorrect information, shall promptly notify in writing all persons to whom the origin declaration was given of any change that could affect its accuracy or validity.

[C: No Party may impose penalties on an exporter that voluntarily provides written notification under paragraph \_\_\_\_ with respect to the making of an incorrect certification.]

8. A false origin declaration by an exporter shall be subject to penalties in the Parties, equivalent to those that would apply to an importer in their territory that makes a false statement or representation in connection with an importation, with appropriate modifications.

9. The Parties shall [EU: explore the establishment of] [C: establish] a system that would permit, for situations in which an origin declaration is submitted electronically and directly from the exporter in the territory of one Party to an importer in the territory of another Party, the replacement of the exporter's original signature on the origin declaration with an electronic signature or identification code.

[C: Where an origin declaration is transmitted electronically from an exporter in the territory of a Party to an importer in the territory of another Party, the original signature of the exporter on the origin declaration may be dispensed with, provided;

- (a) the importer accepts full responsibility for the secure transmission and validity of the electronic origin declarations; or
- (b) the exporter is considered an approved exporter by the Party of export.]

## ARTICLE 17: APPROVED EXPORTER

1. [EU: The customs authorities of the exporting Party may authorise any exporter, (hereinafter referred to as “approved exporter”), who exports products under this Agreement to make out origin declarations **irrespective of the value of the products concerned** (is this needed anymore?) in accordance with appropriate conditions in the respective laws and regulations of the exporting Party. An exporter seeking such authorisation must offer to the satisfaction of the customs authorities all guarantees necessary to verify the originating status of the products as well as the fulfilment of the other requirements of this Annex.]

[C: Where a Party has an established exporter programme, the customs authorities of the exporting Party shall provide the exporter with an authorization number.]

2. [EU: The customs authorities may grant the status of approved exporter subject to any conditions which they consider appropriate.

3. The customs authorities shall grant to the approved exporter a customs authorisation number which shall appear on the origin declaration.]

[C: The customs authorities of the exporting Party shall allow an authorized exporter to use the authorization number in the completion of an origin declaration without signature, in accordance with its laws and regulations.]

4. [EU: The customs authorities shall monitor the use of the authorisation by the approved exporter.

5. The customs authorities may withdraw the authorisation at any time. They shall do so where the approved exporter no longer offers the guarantees referred to in paragraph 1, no longer fulfils the conditions referred to in paragraph 2 or otherwise makes an incorrect use of the authorisation.]

## ARTICLE 18: VALIDITY OF THE ORIGIN DECLARATION

1. [EU: An origin declaration shall be valid for 12 months from the date of issue in the exporting Party, and preferential tariff treatment may be claimed within the said period to the customs authorities of the importing Party.]

[C: Each Party shall ensure that the origin declaration is accepted by its customs administration for \_\_\_\_years after the date of which the origin declaration was signed.]

2. [EU: Origin declarations which are submitted to the customs authorities of the importing Party after the final date for presentation specified in paragraph 1 may be accepted for the purpose of preferential tariff treatment in accordance with the respective laws and regulations of the importing Party, where the failure to submit these documents by the final date set is due to exceptional circumstances.

3. In cases of belated presentation other than those of paragraph 2, the customs authorities of the importing Party may accept the origin declaration in accordance with the procedures of the Parties where the products have been presented before the said final date.]

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[C: A Party shall, in accordance with its domestic legislation, provide that, where a product would have qualified as an originating product when it was imported into the territory of that Party except that the importer did not have an origin declaration at the time of importation, the importer of the product may within a period of no less than two years after the date of importation apply for a refund of duties paid as a result of the product not having been accorded preferential tariff treatment.]

*[EU: ARTICLE 19: CLAIMS FOR PREFERENTIAL TARIFF TREATMENT AND SUBMISSION OF ORIGIN DECLARATIONS] [C: Obligations Regarding Importations]*

[EU: For the purpose of claiming preferential tariff treatment, origin declarations shall, if required by the laws and regulations of the importing Party, be submitted to the customs authorities of the importing Party. The said authorities may require a translation of an origin declaration and may also require the import declaration to be accompanied by a statement from the importer to the effect that the products meet the conditions required for the application of this Agreement.]

[C: Each Party shall grant preferential tariff treatment in accordance with this Agreement to originating products imported from another Party, on the basis of an origin declaration as referred to in Article \_\_\_, provided that:

- (a) the importer requests such preferential tariff treatment at the time of importation;
- (b) if required by the customs administration of the Party of import, the importer is in possession of the origin declaration at the time the request is made; and
- (c) all other requirements of this annex are met.

An importer shall, on request of the customs administration of the Party of import and in accordance with the domestic legislation of that Party, provide to that administration a copy of the origin declaration.

An importer that becomes aware or has reason to believe that an origin declaration for a product to which preferential tariff treatment has been granted contains incorrect information shall immediately notify the customs administration of the Party of import in writing of any change affecting the originating status of that product and pay any duties owing.

When an importer claims preferential tariff treatment for a good imported into the territory from the territory of the other Party:

- (a) the importing Party may deny preferential tariff treatment to the good if the importer fails to comply with any requirement under this Annex; and
- (b) the importing Party shall not subject the importer to penalties for the making of an incorrect declaration if the importer voluntarily corrects the declaration pursuant to paragraph \_\_\_\_.]

## ARTICLE 20: IMPORTATION BY INSTALMENTS

[EU: Where, at the request of the importer and on the conditions laid down by the customs authorities of the importing Party, dismantled or non-assembled products within the meaning of General Rule 2(a) of the HS falling within Sections XVI and XVII or headings 7308 and

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9406 of the HS are imported by instalments, a single origin declaration for such products shall be submitted to the customs authorities upon importation of the first instalment, provided that:]

[C: Where, at the request of the importer and subject to the conditions of the customs administration of the Party of import, an unassembled or disassembled product, within the meaning of General Rule 2 (a) of the Harmonized System, is imported by instalment, such product may benefit from this Agreement, provided that:]

- (a) the complete or finished product qualifies as an originating product;
- (b) a single origin declaration describing the product in its complete or finished form is presented [C: upon request] to the customs administration of the Party of import upon importation of the first instalment; and
- (c) all other requirements of this Annex are met.

### ARTICLE 21: EXEMPTIONS FROM ORIGIN DECLARATIONS

1. [EU: Products sent as small packages from private persons to private persons for the personal use of the recipients or forming part of travellers' personal luggage shall be admitted as originating products without requiring the submission of an origin declaration, provided that such products are not imported by way of trade, have been declared as meeting the requirements of this Annex and where it is evident from the nature and quantity of the products and the occasional character of the imports that no commercial purpose is intended. In the case of products sent by post, this declaration may be made on a postal customs declaration or on a sheet of paper annexed to that document.]

[C: A Party may, in accordance with its domestic legislation, waive the requirement for the origin declaration and grant preferential tariff treatment to originating products, provided the importing party does not conclude that the products were imported for the purpose of avoiding the origin declaration requirements of article \_\_\_\_.]

2. The Parties will exchange information regarding the value limits applied by each Party for products referred to in paragraph 1.

### [EU: ARTICLE 22: SUPPORTING DOCUMENTS

The documents referred to in Article [provision on conditions for making out an origin declaration, §3] used for the purpose of proving that products covered by origin declarations can be considered as products originating in the EC Party or in Canada and fulfil the other requirements of this Protocol may consist *inter alia* of the following:

- (a) direct evidence of the processes carried out by the exporter, supplier or producer to obtain the goods concerned, contained for example in his accounts or internal bookkeeping;
- (b) documents proving the originating status of materials used, issued or made out in a Party where these documents are used as provided for in its domestic law;



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- (c) documents proving the working or processing of materials in a Party, issued or made out in a Party where these documents are used as provided for in its domestic law;
- (d) proofs of origin proving the originating status of materials used issued or made out in a Party in accordance with this Annex; and
- (e) appropriate evidence concerning working or processing undergone outside the territories of the Parties by application of Article [*provision on principle of territoriality*], proving that the requirements of that Article have been satisfied.]

### ARTICLE 23: PRESERVATION OF RECORDS [C: RECORD KEEPING]

1. The exporter [C: that has completed] [EU: making out] an origin declaration shall keep a copy of the origin declaration [C: and all documents supporting the originating status of the product to which the origin declaration applies,] [EU: as well as the documents referred to in Article [*provision on conditions for making out an origin declaration, §3*],] for three years after the completion of the origin declaration or for such longer period as a Party may specify.

2. The documents referred to in paragraph 1 include documents relating to the following:

- (a) the production processes carried out on the originating product or on materials used in the production of that product;
- (b) the purchase of, the cost of, the value of and the payment for the product;
- (c) the origin of, the purchase of, the cost of, the value of and the payment for all materials, including neutral elements, used in the production of the product; and
- (d) the shipment of the product.

3. [EU: When provided for in domestic legislation of the Party of import, an importer that has been granted preferential tariff treatment shall keep the origin declaration concerned for three years after the date on which preferential treatment was granted, or for such longer period as that Party may specify.]

[C: An importer claiming preferential tariff treatment for a good imported into its territory, shall maintain in that territory, for five years after the date of importation of the good or for such longer period as the Party may specify, such documentation, including a copy of the origin declaration, as the Party may require relating to the importation of the good.

Each Party shall permit, in accordance with that Party's laws and regulations, importers, exporters and producers in its territory to maintain documentation or records in any medium, provided that the documentation or records can be retrieved and printed.

A Party may deny preferential tariff treatment to a good that is the subject of an origin verification where the exporter, producer or importer of the good that is required to maintain records or documentation under this Article:

- (a) fails to maintain records or documentation relevant to determining the origin of the good in accordance with the requirements of the Chapter; or
- (b) denies access to such records or documentation.]

## [EU: ARTICLE 24: DISCREPANCIES AND FORMAL ERRORS]

1. The discovery of slight discrepancies between the statements made in the origin declaration and those made in the documents submitted to the customs authorities for the purpose of carrying out the formalities for importing the products shall not *ipso facto* render the origin declaration null and void if it is duly established that such document does correspond to the products submitted.

2. Obvious formal errors such as typing errors on an origin declaration should not cause this document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in this document.]

**NOTE: Below is the consolidated text from Round 1 dated October 21, 2009 which is yet to be revised.**

## TITLE [VI]

## ARRANGEMENTS FOR ADMINISTRATIVE CO-OPERATION

## ARTICLE 26: EXCHANGE OF ADDRESSES

The customs authorities of the Parties shall provide each other, through the Commission of the European Communities, with the addresses of the customs authorities responsible for verifying proofs of origin.

## ARTICLE 27: VERIFICATION OF PROOFS OF ORIGIN

1. In order to ensure the proper application of this Protocol, the Parties shall assist each other, through the customs authorities, in checking the authenticity of the proofs of origin and the correctness of the information given in these documents.

2. Subsequent verifications of proofs of origin shall be carried out at random or whenever the customs authorities of the importing Party have reasonable doubts as to the authenticity of such documents, the originating status of the products concerned or the fulfilment of the other requirements of this Protocol.

3. For the purposes of implementing the provisions of paragraph 1, the customs authorities of the importing Party shall return the proofs of origin or a copy of these documents, to the customs authorities of the exporting Party giving, where appropriate, the reasons for the enquiry. Any documents and information obtained suggesting that the information given on proof of origin is incorrect shall be forwarded in support of the request for verification.

4. The verification shall be carried out by the customs authorities of the exporting Party. For this purpose, they shall have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other check considered appropriate.

5. If the customs authorities of the importing Party decide to suspend the granting of preferential treatment to the products concerned while awaiting the results of the verification,

release of the products shall be offered to the importer subject to any precautionary measures judged necessary.

6. The customs authorities requesting the verification shall be informed of the results of this verification including findings and facts, as soon as possible. These results must indicate clearly whether the documents are authentic and whether the products concerned can be considered as products originating in a Party and fulfil the other requirements of this Protocol.

7. If in cases of reasonable doubt there is no reply within 10 months of the date of the verification request or if the reply does not contain sufficient information to determine the authenticity of the document in question or the real origin of the products, the requesting customs authorities shall except in exceptional circumstances, refuse entitlement to the preference.

8. Notwithstanding Article 2 of Protocol on Mutual Administrative Assistance in Customs Matters, the Parties will refer to Article 7 of that Protocol for joint enquiries related to proofs of origin.]

#### **[C: Article X.6: Origin Verifications**

1. For purposes of determining whether a good imported into its territory from the territory of another Party qualifies as an originating good, a Party may, through its customs administration, conduct a verification by means of:
  - (a) verification letters that request information from the exporter or producer of the good in the territory of another Party;
  - (b) written questionnaires to the exporter or producer of the good in the territory of another Party;
  - (c) visits to the premises of an exporter or producer in the territory of another Party to review the records referred to in Article X.5(1)(a) and observe the facilities used in the production of the good; or
  - (d) any other method of communication customarily used by the customs administration of the Party conducting the verification.
2. For purposes of verifying the origin of a good, the customs administration of the importing Party may request the importer of the good to voluntarily obtain and supply written information voluntarily provided by the exporter or producer of the good in the territory of another Party, provided that the customs administration of the importing Party shall not consider the failure or refusal of the importer to obtain and supply such information as a failure of the exporter or producer to supply the information or as a ground for denying preferential tariff treatment.
3. Each Party shall permit an exporter or producer who receives a verification letter or a questionnaire pursuant to subparagraphs 1(a) and (b) no less than 30 days to provide the information and documentation required or the completed questionnaire. On written request by the exporter or producer made during that period, the customs administration of the importing Party may grant the exporter or producer a single extension of the deadline for a period not exceeding 30 days.
4. If an exporter or producer fails to provide the information and documentation required by a verification letter or fails to return a duly completed questionnaire within the period or extension set out in paragraph 3, the customs administration of the importing

Party may deny preferential tariff treatment to the good in question pursuant to the procedures set out in paragraphs 14, 15 and 16.

5. Prior to conducting a verification visit pursuant to subparagraph 1(c), a Party shall, through its customs administration:
  - (a) deliver a written notification of its intention to conduct the visit:
    - (i) to the exporter or producer whose premises are to be visited,
    - (ii) to the customs administration of the Party in whose territory the visit is to occur, and
    - (iii) if requested by the Party in whose territory the visit is to occur, to the embassy of that Party in the territory of the Party proposing to conduct the visit; and
  - (b) obtain the written consent of the exporter or producer whose premises are to be visited.
6. The notification referred to in paragraph 5 shall include:
  - (a) the identity of the customs administration issuing the notification;
  - (b) the name of the exporter or producer whose premises are to be visited;
  - (c) the date and place of the proposed verification visit;
  - (d) the object and scope of the proposed verification visit, including specific reference to the good that is the subject of the verification;
  - (e) the names and titles of the officials performing the verification visit; and
  - (f) the legal authority for the verification visit.
7. If, within 30 days of the notification pursuant to paragraph 5, an exporter or producer has not given its written consent to a proposed verification visit, the notifying Party may deny preferential tariff treatment to the good that would have been the subject of the visit.
8. The Party whose customs administration receives notification pursuant to subparagraph 5(a)(ii) may, within 15 days of receipt of the notification, postpone in writing to the customs administration who sent the notice, the proposed verification visit for no more than 60 days from the date of such receipt or for such longer period as the Parties may decide.
9. Each Party shall permit, when the exporter or producer receives notification pursuant to subparagraph 5(a)(i) the exporter or producer to, on a single occasion, within 15 days of receipt of the notification, request in writing the postponement of the proposed verification visit for no more than 60 days from the date of such receipt or for such longer period as agreed to by the notifying Party.
10. A Party shall not deny preferential tariff treatment to a good based solely on the postponement of a verification visit pursuant to paragraphs 8 or 9.
11. Each Party shall permit an exporter or a producer whose good is the subject of a verification visit by another Party to designate two observers to be present during the visit, provided that:
  - (a) the observers shall only participate as such; and
  - (b) the failure of the exporter or producer to designate observers shall not result in the postponement of the visit.

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12. When a Party conducts a verification involving a value test, “*de minimis*” calculation or any other provision in Chapter X (Rules of Origin) to which Generally Accepted Accounting Principles may be relevant, it shall apply such principles as are applicable in the territory of the other Party from which the good was exported.
13. When the producer of a good calculates the net cost of the good as set out in Article X.X (Rules of Origin - Value Test), the customs administration of the importing Party shall not verify, during the time period over which the net cost is being calculated, whether the good satisfies the value test.
14. The Party conducting a verification shall provide the exporter or producer whose good is the subject of the verification with a written determination of whether the good qualifies as an originating good, including findings of fact and the legal basis for the determination.
15. If a Party determines as a result of a verification that the good that is the subject of the verification does not qualify as an originating good, the Party shall include in its written determination provided for under paragraph 14 a written notice of intent to deny preferential tariff treatment of the good.
16. The notice issued under paragraph 15 shall provide no less than 30 days during which the exporter or producer of the good may provide, with regard to that written determination, written comments or additional information that will be taken into account by the Party prior to completing the verification.
17. If verifications by a Party indicate a pattern of conduct by an exporter or a producer of false or unsupported representations that a good imported into its territory qualifies as an originating good, the Party may withhold preferential tariff treatment to identical goods exported or produced by such person until that person establishes compliance with Chapter X (Rules of Origin), in accordance with the Party’s domestic law.
18. For purposes of paragraph 17, “pattern of conduct” means at least two instances of false or unsupported representations by an exporter or producer of a good resulting in at least two written determinations being sent to that exporter or producer that conclude that the certificates of origin completed by that exporter or producer with respect to identical goods contain false or unsupported representations.
19. For the purposes of this Article, each Party shall ensure that all communication to the importer, exporter or producer and to the other Party be sent by any means that can produce a confirmation of receipt. The periods referred to in this Article will begin from the date of such receipt.]

[EU: ARTICLE 28: DISPUTE SETTLEMENT

1. Where disputes arise in relation to the verification procedures of Article 27 which cannot be settled between the customs authorities requesting verification and the customs authorities responsible for carrying out this verification or where they raise a question as to the interpretation of this Protocol, they shall be submitted to the Customs Committee.]

**[C: Article X.12: The Customs Procedures Sub-Committee**

1. The Parties hereby establish a Customs Procedures Sub-Committee comprising representatives of each Party. The Customs Procedures Sub-Committee shall meet periodically at the request of a Party, and shall:
  - (a) endeavour to decide on
    - (i) the uniform interpretation, application and administration of Articles X.X (National Treatment and Market Access for Goods - Temporary Admission of Goods), X.X (National Treatment and Market Access for Goods - Duty-Free Entry of Certain Commercial Samples and Printed Advertising Materials), and X.X (National Treatment and Market Access for Goods - Goods Re-Entered after Repair or Alteration), of Chapter X (Rules of Origin), and this Chapter,
    - (ii) tariff classification and valuation matters relating to determinations of origin,
    - (iii) equivalent procedures and criteria for the request, approval, modification, revocation and implementation of advance rulings,
    - (iv) revision of the Certificate of Origin,
    - (v) any other matter referred to it by a Party or the Committee on Trade in Goods and Rules of Origin established under Article X.X (National Treatment and Market Access for Goods - Consultations and Committee on Trade in Goods and Rules of Origin), and
    - (vi) any other customs-related matter arising under this Agreement;
  - (b) consider
    - (i) the harmonization of customs-related automation requirements and documentation, and
    - (ii) proposed customs-related administrative or operational changes that may affect the flow of trade between the Parties' territories;
  - (c) report periodically to the Committee on Trade in Goods and Rules of Origin and notify it of any agreement reached under this paragraph; and
  - (d) refer to the Committee on Trade in Goods and Rules of Origin any matter on which it has been unable to reach a decision within 60 days of referral of the matter to it pursuant to subparagraph (a)(v).
2. Nothing in this Chapter prevents a Party from issuing a determination of origin or an advance ruling relating to any matter under consideration by the Customs Procedures Sub-Committee or the Committee on Trade in Goods and Rules of Origin or from taking such other action that it considers necessary, pending a resolution of the matter under this Agreement.]
2. [EU: In all cases the settlement of disputes between the importer and the competent authorities of the importing Party shall be under the legislation of the said Party.]

**[C: Article X.10: Review and Appeal]**

1. Each Party shall grant substantially the same rights of review and appeal of determinations of origin and advance rulings issued by its customs administration as it provides to importers in its territory, to any person who:
  - (a) completes and signs a Certificate of Origin for a good that has been the subject of a determination of origin; or
  - (b) has received an advance ruling pursuant to Article X.9.1.

2. Further to Articles X.X (Transparency - Administrative Proceedings) and X.X (Transparency - Review and Appeal), each Party shall provide that the rights of review and appeal referred to in paragraph 1 shall include access to:
  - (a) at least one level of administrative review independent of the official or office responsible for the determination under review; and
  - (b) judicial or quasi-judicial review of the determination or decision taken at the final level of administrative review.]

## [EU: ARTICLE 29: PENALTIES

Penalties shall be imposed in accordance with the legislation of the Parties on any person who draws up, or causes to be drawn up, a document which contains incorrect information for the purpose of obtaining preferential treatment for products.]

**[C: Article X.8: Penalties**

1. Each Party shall maintain measures imposing criminal, civil or administrative penalties for violations of its laws and regulations relating to this Chapter. ]

## [EU: ARTICLE 30: FREE ZONES

1. The Parties shall take all necessary steps to ensure that products traded under cover of a proof of origin which in the course of transport use a free zone situated in their territories, are not substituted by other products and do not undergo handling other than normal operations designed to prevent their deterioration.

2. By means of an exemption to the provisions contained in paragraph 1, when products originating in a Party enter into a free zone under cover of a proof of origin and undergo treatment or processing, another proof of origin can be made out if the treatment or processing undergone is in conformity with the provisions of this Protocol.]

**[C: Article X.7: Confidentiality**

1. Each Party shall maintain, in accordance with its law, the confidentiality of the information collected pursuant to this Chapter and shall protect that information from disclosure that could prejudice the competitive position of the persons providing the information. Where the Party receiving or obtaining information is required by its laws to disclose the information, that Party shall notify the Party or person who provided that information.
2. Each Party shall ensure that the confidential information collected pursuant to this Chapter shall not be used for purposes other than the administration and enforcement of determinations of origin and of customs matters, except with the permission of the person or Party who provided the confidential information.
3. Notwithstanding paragraph 2, a Party may allow information collected pursuant to this Chapter to be used in any administrative, judicial or quasi-judicial proceedings instituted for failure to comply with customs related laws and regulations implementing Chapter X (Rules of Origin) and this Chapter. A Party shall notify the person or Party who provided the information in advance of such use.

**Article X.9: Advance Rulings**

LIMITED

*Draft consolidated CETA text as at 13.1.10*

1. Each Party shall through its customs administration, provide for the expeditious issuance of written advance rulings, prior to the importation of a good into its territory, to an importer in its territory or an exporter or a producer in the territory of another Party, on the basis of the facts and circumstances presented by such importer, exporter or producer of the good, concerning whether a good qualifies as an originating good under Chapter X (Rules of Origin).
2. Each Party shall adopt or maintain procedures for the issuance of advance rulings, including a detailed description of the information reasonably required to process an application for a ruling.
3. Each Party shall provide that its customs administration:
  - (a) may, at any time during the course of an evaluation of an application for an advance ruling, request supplemental information from the person requesting the ruling;
  - (b) shall, after it has obtained all necessary information from the person requesting the advance ruling, issue the ruling within 120 days; and
  - (c) shall provide to the person requesting the advance ruling a full explanation of the reasons for the ruling.
4. Where application for an advance ruling involves an issue that is the subject of:
  - (a) a verification of origin;
  - (b) a review by or appeal to the customs administration; or
  - (c) judicial or quasi-judicial review in its territory;the customs administration may decline or postpone the issuance of the ruling.
5. Subject to paragraph 7, each Party shall apply an advance ruling to importations into its territory of the good for which the ruling was requested, beginning on the date of its issuance or such later date as may be specified in the ruling.
6. Each Party shall provide to any person requesting an advance ruling the same treatment as it provided to any other person to whom it issued an advance ruling, provided that the facts and circumstances are identical in all material respects.
7. The issuing Party may modify or revoke an advance ruling:
  - (a) if the ruling is based on an error of fact;
  - (b) if there is a change in the material facts or circumstances on which the ruling is based;
  - (c) to conform with an amendment of Chapter X (National Treatment and Market Access for Goods), Chapter X (Rules of Origin), or this Chapter; or
  - (d) to conform with a judicial decision or a change in its domestic law.
8. Each Party shall provide that any modification or revocation of an advance ruling shall be effective on the date on which the modification or revocation is issued, or on such later date as may be specified therein, and shall not be applied to importations of a



good that have occurred prior to that date, unless the person to whom the advance ruling was issued has not acted in accordance with its terms and conditions.

9. Notwithstanding paragraph 8, the issuing Party shall postpone the effective date of such modification or revocation for no more than 90 days where the person to whom the advance ruling was issued demonstrates that it has relied in good faith to its detriment on that ruling.
10. Each Party shall provide that an advance ruling shall remain in effect and shall be honoured if there is no change in the material facts or circumstances on which it is based.

#### Article X.11: Cooperation

1. The Parties shall cooperate, to the extent practicable, in jointly organizing training programs on customs-related issues, such as simulated audit environment exercises, for the officials who participate directly in customs procedures.
2. With respect to goods considered originating in accordance with Article X.X (Rules of Origin - Accumulation), the Parties may cooperate with a non-Party to develop customs procedures based on the principles of this Chapter.

#### Article X.13: Definitions

For purposes of this Chapter:

**customs administration** means the governmental authority that is responsible under the law of a Party for the administration and application of customs laws and regulations;

**determination of origin** means a determination as to whether a good qualifies as an originating good in accordance with Chapter X (Rules of Origin);

**exporter** means an exporter located in the territory of a Party and an exporter required under this Chapter to maintain records in the territory of that Party regarding exportations of a good;

**identical goods** means goods that are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods under Chapter X (Rules of Origin);

**importer** means an importer located in the territory of a Party and an importer required under this Chapter to maintain records in the territory of that Party regarding importations of a good;

**preferential tariff treatment** means the duty rate applicable under this Agreement to an originating good;

**value** means value of a good or material for purposes of calculating customs duties or for purposes of applying Chapter X (Rules of Origin).

**The following terms shall be interpreted as defined in Chapter X (Rules of Origin):**

- (a) indirect material

- (b) material
- (c) net cost
- (d) producer
- (e) production

*Note: These definitions will be revised against Chapter X (Rules of Origin)*

**[EU: SECTION C  
CEUTA AND MELILLA**

**TITLE [VII]  
CEUTA AND MELILLA**

**ARTICLE 31: APPLICATION OF THE PROTOCOL**

1. The term “EU Party” does not cover Ceuta and Melilla.
2. Products originating in Canada, when imported into Ceuta or Melilla, shall enjoy in all respects the same customs regime as that which is applied to products originating in the customs territory of the Community under Protocol 2 of the *Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities*. Canada shall grant to imports of products covered by this Agreement and originating in Ceuta and Melilla the same customs regime as that which is granted to products imported from and originating in the EU Party.
3. For the purpose of the application of paragraph 2 concerning products originating in Ceuta and Melilla, this Protocol shall apply *mutatis mutandis* subject to the special conditions set out in Article 32.

**ARTICLE 32: SPECIAL CONDITIONS**

1. Providing they have been transported directly in accordance with the provisions of Article 13, the following shall be considered as:
  - (a) products originating in Ceuta and Melilla:
    - (i) products wholly obtained in Ceuta and Melilla; or
    - (ii) products obtained in Ceuta and Melilla in the manufacture of which products other than those referred to in subparagraph (a)(i) are used, provided that:
      - (A) the said products have undergone sufficient working or processing within the meaning of Article 5; or
      - (B) those products originate in a Party, provided that they have been submitted to working or processing which goes beyond the operations referred to in Article 6.

- (b) products originating in Canada:
- (i) products wholly obtained in Canada; or
  - (ii) products obtained in Canada, in the manufacture of which products other than those referred to in subparagraph(b)(i) are used, provided that:
    - (A) the said products have undergone sufficient working or processing within the meaning of Article 5; or
    - (B) those products originate in Ceuta and Melilla or in the EU Party, provided that they have been submitted to working or processing which goes beyond the operations referred to in Article 6.

2. Ceuta and Melilla shall be considered as a single territory.

3. The exporter or his authorised representative shall enter “Canada” or “Ceuta and Melilla” on invoice declarations.

4. The Spanish customs authorities shall be responsible for the application of this Protocol in Ceuta and Melilla.

### ANNEX III

#### TEXT OF THE INVOICE DECLARATION

The invoice declaration, the text of which is given below, must be made out in accordance with the footnotes. However, the footnotes do not have to be reproduced.

##### Bulgarian version

Износителят на продуктите, обхванати от този документ (митническо разрешение № ... (1)) декларира, че освен където е отбелязано друго, тези продукти са с ... преференциален произход (2).

##### Spanish version

El exportador de los productos incluidos en el presente documento (autorización aduanera n° ... (1)) declara que, salvo indicación en sentido contrario, estos productos gozan de un origen preferencial ... (2).

##### Czech version

Vývozce výrobků uvedených v tomto dokumentu (číslo povolení ... (1)) prohlašuje, že kromě zřetelně označených, mají tyto výrobky preferenční původ v ... (2).

##### Danish version

Eksportøren af varer, der er omfattet af nærværende dokument, (toldmyndighedernes tilladelse nr. ... (1)), erklærer, at varerne, medmindre andet tydeligt er angivet, har præferenceoprindelse i ... (2).

##### German version

Der Ausführer (Ermächtigter Ausführer; Bewilligungs-Nr. ... (1)) der Waren, auf die dieses Handelspapier bezieht, erklärt, dass diese Waren, soweit nicht anderes angegeben, präferenzbegünstigte ... (2) Ursprungswaren sind.

##### Estonian version

Käesoleva dokumendiga hõlmatud toodete eksportija (tolliameti kinnitus nr. ... (1)) deklareerib, et need tooted on ... (2) sooduspäritoluga, välja arvatud juhul kui on selgelt näidatud teisiti.

##### Greek version

Ο εξαγωγέας των προϊόντων που καλύπτονται από το παρόν έγγραφο (άδεια τελωνείου υπ' αριθ. ... (1)) δηλώνει ότι, εκτός εάν δηλώνεται σαφώς άλλως, τα προϊόντα αυτά είναι προτιμησιακής καταγωγής ... (2).

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### English version

The exporter of the products covered by this document (customs authorization No ...<sup>(1)</sup>) declares that, except where otherwise clearly indicated, these products are of ...<sup>(2)</sup> preferential origin.

### French version

L'exportateur des produits couverts par le présent document (autorisation douanière n° ...<sup>(1)</sup>) déclare que, sauf indication claire du contraire, ces produits ont l'origine préférentielle ...<sup>(2)</sup>.

### Italian version

L'esportatore delle merci contemplate nel presente documento (autorizzazione doganale n. ...<sup>(1)</sup>) dichiara che, salvo indicazione contraria, le merci sono di origine preferenziale ...<sup>(2)</sup>.

### Latvian version

Eksportētājs produktiem, kuri ietverti šajā dokumentā (muitas pilnvara Nr. ...<sup>(1)</sup>), deklarē, ka, izņemot tur, kur ir citādi skaidri noteikts, šiem produktiem ir priekšrocību izcelsme no ...<sup>(2)</sup>.

### Lithuanian version

Šiame dokumente išvardintų prekių eksportuotojas (muitinės liudijimo Nr. ...<sup>(1)</sup>) deklaruoja, kad, jeigu kitaip nenurodyta, tai yra ...<sup>(2)</sup> preferencinės kilmės prekės.

### Hungarian version

A jelen okmányban szereplő áruk exportőre (vámfelhatalmazási szám: ...<sup>(1)</sup>) kijelentem, hogy eltérő jelzés hiányában az áruk kedvezményes ...<sup>(2)</sup> származásúak.

### Maltese version

L-esportatur tal-prodotti koperti b'dan id-dokument (awtorizzazzjoni tad-dwana nru. ...<sup>(1)</sup>) jiddikjara li, hliet fejn indikat b'mod ċar li mhux hekk, dawn il-prodotti huma ta' oriġini preferenzjali ...<sup>(2)</sup>.

### Dutch version

De exporteur van de goederen waarop dit document van toepassing is (douanevergunning nr. ...<sup>(1)</sup>), verklaart dat, behoudens uitdrukkelijk andersluidende vermelding, deze goederen van preferentiële ... oorsprong zijn ...<sup>(2)</sup>.

### Polish version

Eksporter produktów objętych tym dokumentem (upoważnienie władz celnych nr ...<sup>(1)</sup>) deklaruje, że z wyjątkiem gdzie jest to wyraźnie określone, produkty te mają ...<sup>(2)</sup> preferencyjne pochodzenie.

### Portuguese version

O abaixo assinado, exportador dos produtos cobertos pelo presente documento (autorização aduaneira n.º. ...<sup>(1)</sup>), declara que, salvo expressamente indicado em contrário, estes produtos são de origem preferencial ...<sup>(2)</sup>.

### Romanian version

Exportatorul produselor ce fac obiectul acestui document (autorizația vamală nr. ...<sup>(1)</sup>) declară că, exceptând cazul în care în mod expres este indicat altfel, aceste produse sunt de origine preferențială ...<sup>(2)</sup>.

### Slovenian version

Izvoznik blaga, zajetega s tem dokumentom (pooblastilo carinskih organov št. ...<sup>(1)</sup>) izjavlja, da, razen če ni drugače jasno navedeno, ima to blago preferencialno ...<sup>(2)</sup> poreklo.

### Slovak version

Vývozca výrobkov uvedených v tomto dokumente (číslo povolenia ...<sup>(1)</sup>) vyhlasuje, že okrem zreteľne označených, majú tieto výrobky preferenčný pôvod v ...<sup>(2)</sup>.

### Finnish version

Tässä asiakirjassa mainittujen tuotteiden viejä (tullin lupa n:o ...<sup>(1)</sup>) ilmoittaa, että nämä tuotteet ovat, ellei toisin ole selvästi merkitty, etuuskohteluun oikeutettuja ... alkuperä tuotteita ...<sup>(2)</sup>.

### Swedish version

Exportören av de varor som omfattas av detta dokument (tullmyndighetens tillstånd nr. ...<sup>(1)</sup>) försäkrar att dessa varor, om inte annat tydligt markerats, har förmånsberättigande ... ursprung ...<sup>(2)</sup>.

.....3

<sup>1</sup> When the invoice declaration is made out by an approved exporter, the authorisation number of the approved exporter must be entered in this space. When the invoice declaration is not made out by an approved exporter, the words in brackets shall be

(Place and date)

.....<sup>4</sup>  
(Signature of the exporter, in addition to the name of the person signing the declaration has to be indicated in clear script)]

*CHAPTER [XX]*  
**INVESTMENT AND SERVICES**

**EU TEXT**

**TRADE IN SERVICES, ESTABLISHMENT AND E-COMMERCE**

*SECTION 1*

*GENERAL PROVISIONS*

*ARTICLE 1: OBJECTIVE, SCOPE AND COVERAGE*

1. The Parties, reaffirming their respective commitments under WTO Agreement hereby lay down the necessary arrangements for the progressive reciprocal liberalisation of trade in services and establishment and for co-operation on e-commerce.
2. Nothing in this Chapter shall be construed to require the privatisation of public undertakings or to impose any obligation with respect to government procurement.
3. The provisions of this Chapter shall not apply to subsidies granted or grants provided by a Party, including government-supported loans, guarantees, and insurance.
4. Consistent with the provisions of this Chapter, each Party retains the right to regulate and to introduce new regulations to meet legitimate policy objectives.

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omitted or the space left blank.

<sup>2</sup> Origin of products to be indicated. When the invoice declaration relates, in whole or in part, to products originating in Ceuta and Melilla, the exporter must clearly indicate them in the document on which the declaration is made out by means of the symbol "CM".

<sup>3</sup> These indications may be omitted if the information is contained on the document itself.

<sup>4</sup> In cases where the exporter is not required to sign, the exemption of signature also implies the exemption of the name of the signatory.

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5. This Chapter shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

Nothing in this Chapter shall prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment<sup>5</sup>.

### ARTICLE 2: DEFINITIONS

For the purposes of this Chapter:

- (a) 'measure' means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (b) 'measures adopted or maintained by a Party' means measures taken by:
  - (i) central, regional or local governments and authorities, for Canada, this is understood to refer to federal or provincial or municipal governments and authorities; and
  - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities; for Canada, this is understood to cover a Crown Corporation within the meaning of the Financial Administration Act (Canada), and a Crown corporation within the meaning of comparable provincial law or any equivalent entity formed under other applicable provincial law;
- (c) 'person' means either a natural person or a juridical person
- (d) 'natural person' means a national of Canada or one of the Member States of the European Union according to their respective legislation;
- (e) 'juridical person' means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association
- (f) a 'European Union juridical person' or a 'Canadian juridical person' means:
  - (i) a juridical person set up in accordance with the laws of a Member State of the European Union or of Canada respectively, and having its registered office, central administration<sup>6</sup>, or principal place of business in the territory of the European Union or Canada, respectively; or
  - (ii) in the case of the supply of a service through establishment, a juridical person owned or controlled by natural persons of one of the Member States of the European Union or of Canada respectively or by European Union juridical persons or Canadian juridical persons respectively.

Should the juridical person have only its registered office or central administration in the territory of the European Union or of Canada respectively, it shall not be considered as a

<sup>5</sup> The sole fact of requiring a visa for natural persons of certain country and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

<sup>6</sup> Central administration means the head office where ultimate decision making takes place.

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European Union or Canadian juridical person respectively, unless it engages in substantive business operations<sup>7</sup> in the territory of the European Union or of Canada, respectively;

A juridical person is:

- (i) "owned" by natural or juridical persons of one of the Member States of the European Union or of Canada if more than 50 per cent of the equity interest in it is beneficially owned by persons of that/a Member State of the European Union or of Canada respectively; and
  - (ii) "controlled" by natural or juridical persons of one of the Member States of the European Union or of Canada if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
  - (iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person.
- (g) Notwithstanding the preceding paragraph, shipping companies established outside the European Union or Canada and controlled by nationals of a Member State of the European Union or of Canada, respectively, shall also be beneficiaries of the provisions of this Agreement, if their vessels are registered in accordance with their respective legislation in that Member State or in Canada and carry the flag of a Member State or Canada.
- h) 'economic integration agreement' means an agreement substantially liberalising trade in services and establishment pursuant to WTO rules.
- i) 'service supplier' means any person that supplies or seeks to supply a service, including as an investor

## SECTION 2

### CROSS BORDER SUPPLY OF SERVICES

#### ARTICLE 3: SCOPE AND COVERAGE

1. This Section applies to measures of the Parties affecting the cross border supply of all services sectors with the exception of:
- (a) audio-visual services;
  - (b) national maritime cabotage<sup>8</sup> and,

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<sup>7</sup> The EC understands that the concept of "effective and continuous link" with the economy of a Member State enshrined in Article 48 of the EC Treaty is equivalent to the concept of "substantive business operations". Accordingly, for a juridical person set up in accordance with the laws of Canada and having only its registered office or central administration in the territory of Canada, the EC shall only extend the benefits of this Agreement if that juridical person possesses an effective and continuous economic link with the economy of Canada.

- (c) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
  - (ii) the selling and marketing of air transport services;
  - (iii) computer reservation system (CRS) services;
  - (iv) groundhandling services
  - (v) airport operation services

#### **ARTICLE 4: DEFINITIONS**

For the purposes of this Section

- (a) cross-border supply of services is defined as the supply of a service:
  - (i) from the territory of a Party into the territory of the other Party
  - (ii) in the territory of a Party to the service consumer of the other Party
- (b) ‘services’ includes any service in any sector except services supplied in the exercise of governmental authority.
 

‘a service supplied in the exercise of governmental authority’ means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

#### **ARTICLE 5: MARKET ACCESS**

1. With respect to market access through the cross-border supply of services, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for in the specific commitments contained in Annex 7A (Lists of Commitments).
2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of an administrative subdivision or on the basis of its entire territory, unless otherwise specified in Annex 7A (Lists of Commitments) are defined as:
  - (a) limitations on the number of services suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test<sup>9</sup>;
  - (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

<sup>8</sup> Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this chapter covers transportation of passengers or goods between a port or point located in Canada or a Member State of the Community and another port or point located in Canada or Member State of the Community, including on its continental shelf, as provided in the UN Convention on the Law of the Sea and traffic originating and terminating in the same port or point located in Canada or Member State of the Community.

<sup>9</sup> This subparagraph includes measures which require a service supplier of the other Party to have an establishment within the meaning of Article 7.9 (a) or to be resident in its territory as a condition for the cross-border supply of a service.



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*Draft consolidated CETA text as at 13.1.10*

- (c) limitations on the total number of service operations or on the total quantity of service output expressed in the terms of designated numerical units in the form of quotas or the requirement of an economic needs test<sup>10</sup>

### *ARTICLE 6: NATIONAL TREATMENT*

1. In the sectors where market access commitments are inscribed in Annex 7A (Lists of Commitments), and subject to any conditions and qualifications set out therein, each Party shall accord to services and service suppliers of the other Party, in respect of all measures affecting the cross-border supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.
2. The treatment accorded under paragraph 1 means, with respect to a regional/provincial or local/municipal government, treatment no less favourable than the most favourable treatment accorded by that regional/provincial or local/municipal government to its own like services and service suppliers.
3. A Party may meet the requirement of paragraph 1 and 2 by according to services and service suppliers of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
4. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of a Party compared to like services or service suppliers of the other Party.
5. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or services suppliers.

### *ARTICLE 7: LISTS OF COMMITMENTS*

1. The sectors liberalised by each of the Parties pursuant to this Section and, by means of reservations, the market access and national treatment limitations applicable to services and services suppliers of the other Party in those sectors are set out in lists of commitments included in Annex 7A (Lists of Commitments).
2. Neither Party may adopt new, or more discriminatory measures with regard to services or services suppliers of the other Party in comparison with treatment accorded pursuant to the specific commitments undertaken in conformity with paragraph 1.

### *ARTICLE 8: MOST-FAVOURED-NATION TREATMENT<sup>11</sup>*

1. With respect to any measures affecting cross-border supply of services covered by this Chapter, unless otherwise provided for in paragraphs 2 and 4, each Party shall accord to services and services suppliers of the other Party a treatment no less favourable than that it

<sup>10</sup> Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

<sup>11</sup> Nothing in this Article shall be interpreted as extending the scope and coverage of this Section.

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*Draft consolidated CETA text as at 13.1.10*

accords to like services and services suppliers of a major trading economy in the context of an economic integration agreement.

2. Paragraph 1 shall not apply to economic integration agreements that create an internal market in services, and to which a Party is a signatory.
3. The obligations set by paragraph 1 of this provision shall not apply to treatment granted:
  - a) under measures providing for recognition of qualifications, licences or prudential measures in accordance with Article VII of the General Agreement on Trade in Services or its Annex on Financial Services,
  - b) under any international agreement or arrangement relating wholly or mainly to taxation, or
  - c) under measures benefiting from the coverage of an MFN exemption listed in Annex 7A (Lists of Commitments)
4. For the purpose of this provision, a "major trading economy" means any country accounting for a share of world merchandise exports above 1 percent in the year before the entry into force of the economic integration agreement referred to in paragraph 1, or any group of countries acting individually, collectively or through an economic integration agreement accounting collectively for a share of world merchandise exports above 1.5 percent in the year before the entry into force of the economic integration agreement referred to in paragraph 1.12

### SECTION 3

#### ESTABLISHMENT

#### ARTICLE 9: DEFINITIONS

For purposes of this Section

- (a) 'establishment' means:
  - (i) the constitution, acquisition or maintenance of a juridical person<sup>13</sup>, or
  - (ii) the creation or maintenance of a branch or representative office within the territory of a Party for the purpose of performing an economic activity;
- (b) 'investor' of a Party means any person that seeks to perform or performs an economic activity through setting up an establishment<sup>14</sup>;

<sup>12</sup> For this calculation official data by the WTO on leading exporters in world merchandise trade (excluding intra-EU trade) shall be used.

<sup>13</sup> The terms "constitution" and "acquisition" of a juridical person shall be understood as including capital participation in a juridical person with a view to establishing or maintaining lasting economic links.

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- (c) 'economic activity' includes any activities of an economic nature except activities carried out in the exercise of governmental authority, i.e. activities carried out neither on a commercial basis nor in competition with one or more economic operators.
- (d) 'subsidiary' of a juridical person of a Party means a juridical person which is effectively controlled by another juridical person of that Party;
- (e) 'branch' of a juridical person means a place of business not having legal personality which has the appearance of permanency, such as the extension of a parent body, has a management and is materially equipped to negotiate business with third parties so that the latter, although knowing that there will if necessary be a legal link with the parent body, the head office of which is abroad, do not have to deal directly with such parent body but may transact business at the place of business constituting the extension.

### ARTICLE 10: COVERAGE

This Section applies to measures adopted or maintained by the Parties affecting establishment<sup>15</sup> in all economic activities with the exception of

- (a) mining, manufacturing and processing<sup>16</sup> of nuclear materials;
- (b) production of or trade in arms, munitions and war material;
- (c) audio-visual services;
- [(d) national maritime cabotage<sup>17</sup>, and;]
- (e) domestic and international air transport services, whether scheduled or non-scheduled, and services directly related to the exercise of traffic rights, other than:
  - (i) aircraft repair and maintenance services during which an aircraft is withdrawn from service;
  - (ii) the selling and marketing of air transport services;
  - (iii) computer reservation system (CRS) services;
  - (iv) groundhandling services
  - (v) airport operation services

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<sup>14</sup> Where the economic activity is not performed directly by a juridical person but through other forms of establishment such as a branch or a representative office, the investor (i.e. the juridical person) shall, nonetheless, through such establishment be accorded the treatment provided for investors under the Agreement. Such treatment shall be extended to the establishment through which the economic activity is performed and need not be extended to any other parts of the investor located outside the territory where the economic activity is performed.

<sup>15</sup> Investment protection, other than the treatment deriving from Article 7.12 (National Treatment), including investor-state dispute settlement procedures, is not covered by this Chapter.

<sup>16</sup> For greater certainty, processing of nuclear materials includes all the activities contained in UN ISIC Rev.3.1 code 2330.

<sup>17</sup> Without prejudice to the scope of activities which may be considered as cabotage under the relevant national legislation, national maritime cabotage under this chapter covers transportation of passengers or goods between a port or point located in Canada or a Member State of the Community and another port or point located in Canada or Member State of the Community, including on its continental shelf, as provided in the UN Convention on the Law of the Sea and traffic originating and terminating in the same port or point located in Canada or Member State of the Community.

## ARTICLE 11: MARKET ACCESS

1. With respect to market access through establishment, each Party shall accord establishments and investors of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in the specific commitments contained in Annex 7A (Lists of Commitments).
2. In sectors where market access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a administrative subdivision or on the basis of its entire territory, unless otherwise specified in Annex 7A (Lists of Commitments) are defined as:
  - (a) limitations on the number of establishments whether in the form of numerical quotas, monopolies, exclusive rights or other establishment requirements such as economic needs tests;
  - (b) limitations on the total value of transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (c) limitations on the total number of operations or on the total quantity of output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test<sup>18</sup>.
  - (d) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment;
  - (e) measures which restrict or require specific types of legal entity or joint ventures through which an investor of the other Party may perform an economic activity.
  - (f) limitations on the total number of natural persons, other than key personnel and graduate trainees as defined in Article 7.17, that may be employed in a particular sector or that an investor may employ and who are necessary for, and directly related to, the performance of the economic activity in the form of numerical quotas or the requirement of an economic needs test

## ARTICLE 12: NATIONAL TREATMENT

1. In the sectors inscribed in Annex 7A (Lists of Commitments), and subject to any conditions and qualifications set out therein, with respect to all measures affecting establishment,<sup>19</sup> each Party shall grant to establishments and investors of the other Party treatment no less favourable than that it accords to its own like establishments and investors.
2. The treatment accorded under paragraph 1 means, with respect to a regional/provincial or local/municipal government, treatment no less favourable than the most favourable treatment accorded by that regional/provincial or local/municipal government to its own like establishments and investors, or to those of other provinces or municipalities, whichever is the more favourable.

<sup>18</sup> Subparagraphs 2(a), 2(b) and 2(c) do not cover measures taken in order to limit the production of an agricultural product.

<sup>19</sup> The obligations in this provision apply also to measures governing the composition of boards of directors of an establishment, such as nationality and residency requirements.

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3. A Party may meet the requirement of paragraph 1 and 2 by according to establishments and investors of the other Party, either formally identical treatment or formally different treatment to that it accords to its own like establishments and investors.
4. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of establishments and investors of the Party compared to like establishments and investors of the other Party.
5. Specific commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant investors.

### ARTICLE 13: LISTS OF COMMITMENTS

1. The sectors liberalised by each of the Parties pursuant to this Section and, by means of reservations, the market access and national treatment limitations applicable to establishments and investors of the other Party in those sectors are set out in lists of commitments included in Annex 7A (Lists of Commitments).
2. Neither Party may adopt new, or more, discriminatory measures with regard to establishments and investors of the other Party in comparison with treatment accorded pursuant to the specific commitments undertaken in conformity with paragraph 1.

### ARTICLE 14: MOST-FAVOURED-NATION TREATMENT<sup>20</sup>

1. With respect to any measures covered by this Section affecting establishment, unless otherwise provided for in paragraphs 2 and 4, each Party shall accord to establishments and investors of the other Party a treatment no less favourable than that it accords to like establishments and investors of major trading economy in the context of an economic integration agreement.<sup>21</sup>
2. Paragraph 1 shall not apply to economic integration agreements that create an internal market in services and establishment, and to which a Party is a signatory.
3. The obligations set by paragraph 1 of this provision shall not apply to treatment granted:
  - a) under measures providing for recognition of qualifications, licences or prudential measures in accordance with Article VII of the General Agreement on Trade in services or its Annex on Financial Services,
  - b) under any international agreement or arrangement relating wholly or mainly to taxation, or
  - c) under measures benefiting from the coverage of an MFN exemption listed in Annex 7A (Lists of Commitments)

<sup>20</sup> Nothing in this Article shall be interpreted as extending the scope and coverage of this Section.

<sup>21</sup> The obligation contained in paragraph 1 does not extend to the investment protection provisions not covered by this Chapter, including provisions relating to investor-state dispute settlement procedures.

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4. For the purpose of this provision, a "major trading economy" means any country accounting for a share of world merchandise exports above 1 percent in the year before the entry into force of the economic integration agreement referred to in paragraph 1, or any group of countries acting individually, collectively or through an economic integration agreement accounting collectively for a share of world merchandise exports above 1.5 percent in the year before the entry into force of the economic integration agreement referred to in paragraph 1.22

### ARTICLE 15: OTHER AGREEMENTS

Nothing in this Section shall be taken:

- (a) to limit the rights of investors of the Parties to benefit from any more favourable treatment provided for in any existing or future international agreement relating to investment to which a Member State of the European Union and Canada are Parties, and
- (b) to derogate from the international legal obligations of the Parties under those agreements that provide investors of the Parties with more favourable treatment than that provided for under this Agreement.

### SECTION 4

#### TEMPORARY PRESENCE OF NATURAL PERSONS FOR BUSINESS PURPOSES

### ARTICLE 16: COVERAGE

1. This Section applies to measures of the Parties concerning the entry and temporary stay into their territories of key personnel, graduate trainees, business services sellers, contractual services suppliers and independent professionals in accordance with Article 1 paragraph 5, of this Agreement.
2. For the purpose of this Section:
  - (a) 'Key personnel' means natural persons employed within a juridical person of one Party other than a non-profit organisation and who are responsible for the setting-up or the proper control, administration and operation of an establishment.  
  
'Key personnel' comprises 'business visitors' responsible for setting up an establishment and 'intra-corporate transferees'.
  - (i) 'Business visitors' means natural persons working in a senior position who are responsible for setting up an establishment. They do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host Party.

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22 For this calculation official data by the WTO on leading exporters in world merchandise trade (excluding intra-EU trade) shall be used.

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- (ii) ‘Intra-corporate transferees’ means natural persons who have been employed by a juridical person of one Party or have been partners in it for at least one year and who are temporarily transferred to an establishment (that may be a subsidiary, branch or head company of the enterprise) in the territory of the other Party. The natural person concerned must belong one of the following categories:

### 1. Managers:

Persons working in a senior position within a juridical person, who primarily direct the management of the establishment, receiving general supervision or direction principally from the board of directors or stockholders of the business or their equivalent, including:

- directing the establishment or a department or sub-division thereof;
- supervising and controlling the work of other supervisory, professional or managerial employees;
- having the authority personally to recruit and dismiss or recommend recruiting, dismissing or other personnel actions.

### 2. Specialists:

Persons working within a juridical person who possess uncommon knowledge essential to the establishment’s production, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the establishment, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession.

- (b) ‘graduate trainees’ means natural persons who have been employed by a juridical person of one Party for at least one year, who possess a university degree and who are temporarily transferred to an establishment in the territory of the other Party for career development purposes or to obtain training in business techniques or methods<sup>23</sup>.
- (c) ‘business services sellers’ means natural persons who are representatives of a service supplier of one Party seeking temporary entry into the territory of the other Party for the purpose of negotiating the sale of services or entering into agreements to sell services for that service supplier. They do not engage in making direct sales to the general public and do not receive remuneration from a source located within the host Party.
- (d) ‘contractual services suppliers’ means natural persons employed by a juridical person of one Party which has no establishment in the territory of the other Party and which has concluded a *bona fide* contract (other than through an agency as defined by CPC 872) to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services.<sup>24</sup>

<sup>23</sup> The recipient establishment may be required to submit a training programme covering the duration of stay for prior approval, demonstrating that the purpose of the stay is for training. The competent authorities may require that training be linked to the university degree which has been obtained.

<sup>24</sup> The service contract referred to under d) and e) shall comply with the laws, regulations and requirements of the Party where the contract is executed.

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- (e) ‘independent professionals’ means natural persons engaged in the supply of a service and established as self-employed in the territory of a Party who have no establishment in the territory of the other Party and who have concluded a *bona fide* contract (other than through an agency as defined by CPC 872) to supply services with a final consumer in the latter Party requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services<sup>25</sup>

### ARTICLE 17: KEY PERSONNEL AND GRADUATE TRAINEES

1. For every sector liberalised in accordance with Section 3 of this Chapter and subject to any reservations listed in Annex 7A (Lists of Commitments), each Party shall allow investors of the other Party to employ in their establishment natural persons of that other Party provided that such employees are key personnel or graduate trainees as defined in Article 7.17. The temporary entry and stay of key personnel and graduate trainees shall be for a period of up to 3 years for intra-corporate transfers, 90 days in any twelve month period for business visitors, and 1 year for graduate trainees.
2. For every sector liberalised in accordance with Section 3 of this Chapter, the measures which a Party shall not maintain or adopt, unless otherwise specified in Annex 7A (Lists of Commitments), are defined as limitations on the total number of natural persons that an investor may transfer as key personnel or graduate trainees in a specific sector in the form of numerical quotas or a requirement of an economic needs test and as discriminatory limitations.

### ARTICLE 18: BUSINESS SERVICES SELLERS

For every sector liberalised in accordance with Section 2 or Section 3 of this Chapter and subject to any reservations listed in Annex 7A (Lists of Commitments), each Party shall allow the temporary entry and stay of business services sellers for a period of up to 90 days in any twelve month period.<sup>26</sup>

### ARTICLE 19: CONTRACTUAL SERVICES SUPPLIERS AND INDEPENDENT PROFESSIONALS

1. For the sectors specified in Annex [...] (contractual services suppliers), each Party shall allow the supply of services into its territory by contractual services suppliers of the other Party, through presence of natural persons, subject to the following conditions:
  - (a) The natural persons must be engaged in the supply of a service on a temporary basis as employees of a juridical person, which has obtained a service contract for a period not exceeding twelve months.

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<sup>25</sup> The service contract referred to under d) and e) shall comply with the laws, regulations and requirements of the Party where the contract is executed.

<sup>26</sup> This paragraph is without prejudice to the rights and obligations deriving from bilateral visa waiver agreements between Canada and individual EU Member States.



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- (b) The natural persons entering the other Party must be offering such services as an employee of the juridical person supplying the services for at least the year immediately preceding the date of submission of an application for entry into the other Party. In addition, the natural persons must possess, at the date of submission of an application for entry into the other Party, at least three years professional experience<sup>27</sup> in the sector of activity which is the subject of the contract.
  - (c) The natural persons entering the other Party must possess (i) a university degree or a qualification demonstrating knowledge of an equivalent level<sup>28</sup> and (ii) professional qualifications where this is required to exercise an activity pursuant to the law, regulations or requirements of the Party applicable where the service is supplied.
  - (d) The natural person shall not receive remuneration for the provision of services other than the remuneration paid by the contractual service supplier during their stay in the other Party.
  - (e) The temporary entry and stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months or, in the case of Luxembourg, twenty-five weeks, in any twelve month period or for the duration of the contract, whichever is less.
  - (f) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract; it does not confer entitlement to exercise the professional title of the Party where the service is provided.
  - (g) The number of persons covered by the service contract shall not be larger than necessary to fulfil the contract, as it may be decided by the laws, regulations and requirements of the Party where the service is supplied.
  - (h) Other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in Annex [...].
2. For the sectors specified in Annex [ ] (independent professionals), each Party shall allow the supply of services into its territory by independent professionals of the other Party subject to the following conditions:
- (a) The natural persons must be engaged in the supply of a service on a temporary basis as self-employed persons established in the other Party and must have obtained a service contract for a period not exceeding twelve months.
  - (b) The natural persons entering the other Party must possess, at the date of submission of an application for entry into the other Party, at least six years professional experience in the sector of activity which is the subject of the contract.
  - (c) The natural persons entering the other Party must possess (i) a university degree or a qualification demonstrating knowledge of an equivalent level<sup>29</sup> and (ii) professional qualifications where this is required to exercise an activity pursuant to the law, regulations or requirements of the Party applicable where the service is supplied.
  - (d) The temporary entry and stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months or, in the case of Luxembourg, twenty-

<sup>27</sup> Obtained after having reached the age of majority.

<sup>28</sup> Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

<sup>29</sup> Where the degree or qualification has not been obtained in the Party where the service is supplied, that Party may evaluate whether this is equivalent to a university degree required in its territory.

five weeks, in any twelve month period or for the duration of the contract, whichever is less.

(e) Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract, it does not confer entitlement to exercise the professional title of the Party where the service is provided.

(f) Other discriminatory limitations, including on the number of natural persons in the form of economic needs tests, which are specified in Annex [...]

## **SECTION 5**

### **REGULATORY FRAMEWORK**

#### **SUB-SECTION 1**

#### **PROVISIONS OF GENERAL APPLICATION**

#### *ARTICLE 20: MUTUAL RECOGNITION*

[text to be provided by Canada]

#### *ARTICLE 21: TRANSPARENCY AND CONFIDENTIAL INFORMATION*

1. The Parties shall respond promptly to all requests, by the other Party for specific information [this will need to be coordinated with the Chapter on Transparency]:
  - (a) on international agreements or arrangements, including on mutual recognition, which pertain to or affect this Chapter, and
  - (b) on standards and criteria for licensing and certification of services suppliers, including information concerning the appropriate regulatory or other body to consult regarding such standards and criteria. Such standards and criteria include requirements regarding education, examinations, experience, conduct and ethics, professional development and re-certification, scope of practice, local knowledge, and consumer protection
2. Nothing in this Agreement shall require any Party to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.
3. Each Party's regulatory authorities shall make publicly available the requirements, including any documentation required, for completing applications relating to the supply of services.
4. On the request of an applicant, a Party's regulatory authority shall inform the applicant of the status of its application. If the authority requires additional information from the applicant, it shall notify the applicant without undue delay.

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5. On the request of an unsuccessful applicant, a regulatory authority that has denied an application shall, to the extent possible, inform the applicant of the reasons for denial of the application.
6. A Party's regulatory authority shall make an administrative decision on a completed application of an investor or a cross-border service supplier of the other Party relating to the supply of a service within 120 days, and shall promptly notify the applicant of the decision. An application shall not be considered complete until all relevant hearings are held and all necessary information is received. Where it is not possible for a decision to be made within 120 days, the regulatory authority shall notify the applicant without undue delay and shall endeavor to make the decision within a reasonable time thereafter.

### ARTICLE 22: DOMESTIC REGULATION

[EC currently revising its standard text for December 2009]

#### SUB-SECTION 2

#### COMPUTER SERVICES

### ARTICLE 23: COMPUTER SERVICES

1. In liberalising trade in computer services in accordance with Sections 2, 3 and 4 of this Chapter, the Parties shall comply with the following paragraphs.
2. CPC30 84, the United Nations code used for describing computer and related services, covers the basic functions used to provide all computer and related services: computer programmes defined as the sets of instructions required to make computers work and communicate (including their development and implementation), data processing and storage, and related services, such as consultancy and training services for staff of clients. Technological developments have led to the increased offering of these services as a bundle or package of related services that can include some or all of these basic functions. For example, services such as web or domain hosting, data mining services and grid computing each consist of a combination of basic computer services functions.
3. Computer and related services, regardless of whether they are delivered via a network, including the Internet, include all services that provide:
  - (a) consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration, testing, debugging, updating, support, technical assistance, or management of or for computers or computer systems; or
  - (b) computer programmes defined as the sets of instructions required to make computers work and communicate (in and of themselves), plus consulting, strategy, analysis, planning, specification, design, development, installation, implementation, integration,

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30 CPC means the Central Products Classification as set out in Statistical Office of the United Nations, Statistical Papers, Series M, N° 77, CPC prov, 1991.

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testing, debugging, updating, adaptation, maintenance, support, technical assistance, management or use of or for computer programs; or

- (c) data processing, data storage, data hosting or database services; or
  - (d) maintenance and repair services for office machinery and equipment, including computers; or,
  - (e) training services for staff of clients, related to computer programmes, computers or computer systems, and not elsewhere classified.
4. Computer and related services enable the provision of other services (e.g., banking) by both electronic and other means. However, there is an important distinction between the enabling service (e.g., web-hosting or application hosting) and the content or core service that is being delivered electronically (e.g., banking). In such cases, the content or core service is not covered by CPC 84.

### SUB-SECTION 3

#### POSTAL AND COURIER SERVICES

##### *ARTICLE 24: SCOPE AND DEFINITIONS*

1. This Sub-section sets out principles of the regulatory framework for all postal and courier service liberalised in accordance with Sections 2, 3 and 4 of this Chapter.
2. For the purpose of this Sub-section :
  - (a) Universal service means the permanent provision of a postal service of specified quality at all points in the territory of a Party at affordable prices for all users.
  - (b) A “licence” means an authorisation, granted to an individual supplier by a regulatory authority, which is required before supplying a given service.

##### *ARTICLE 25: PREVENTION OF ANTI-COMPETITIVE PRACTICES IN THE POSTAL AND COURIER SECTOR*

Appropriate measures shall be maintained or introduced for the purpose of preventing suppliers who, alone or together, have the ability to affect materially the terms of participation (having regard to price and supply) in the relevant market for postal and courier services as a result of use of their position in the market, from engaging in or continuing anti-competitive practices.

*ARTICLE 26: UNIVERSAL SERVICES*

Any Party has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party.

*ARTICLE 27: LICENCES*

1. Provision of services shall be authorised, wherever possible, upon simple notification. A licence shall only be required for services which fall within the scope of the universal service.
2. Where a licence is required, the following shall be made publicly available:
  - (a) all the licensing criteria and the period of time normally required to reach a decision concerning an application for a licence and
  - (b) the terms and conditions of licences.
3. The reasons for the denial of a licence shall be made known to the applicant upon request, and an appeal procedure through an independent body will be established by the Party concerned. Such a procedure will be transparent, non-discriminatory, and based on objective criteria.

*ARTICLE 28: INDEPENDENCE OF REGULATORY BODIES*

The regulatory bodies shall be legally separate from, and not accountable to, any supplier of postal and courier services. The decisions of and the procedures used by the regulatory bodies shall be impartial with respect to all market participants.

**SUB-SECTION 4****TELECOMMUNICATIONS SERVICES**

*(See separate consolidated text)*

**SUB-SECTION 5****FINANCIAL SERVICES***ARTICLE 39: SCOPE AND DEFINITIONS*

1. This Sub-Section sets out the principles of the regulatory framework for all financial services liberalised pursuant to Sections 2, 3 and 4 of this Chapter.
2. For the purpose of this Chapter
  - (a) 'financial service' means any service of a financial nature offered by a financial service supplier of a Party. Financial services include the following activities:

## A. Insurance and insurance-related services

1. direct insurance (including co-insurance):
  - (a) life;
  - (b) non-life;
2. reinsurance and retrocession;
3. insurance inter-mediation, such as brokerage and agency; and
4. services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

## B. Banking and other financial services (excluding insurance):

1. acceptance of deposits and other repayable funds from the public;
2. lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;
3. financial leasing;
4. all payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;
5. guarantees and commitments;
6. trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:
  - (a) money market instruments (including cheques, bills, certificates of deposits);
  - (b) foreign exchange;
  - (c) derivative products including, but not limited to, futures and options;
  - (d) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;
  - (e) transferable securities;
  - (f) other negotiable instruments and financial assets, including bullion;
7. participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;
8. money broking;
9. asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

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10. settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;
  11. provision and transfer of financial information, and financial data processing and related software;
  12. advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (1) through (11), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.
- (b) 'financial service supplier' means any natural or juridical person of a Party that seeks to provide or provides financial services. The term 'financial service supplier' does not include a public entity.
- (c) 'public entity' means:
1. a government, a central bank or a monetary authority, of a Party, or an entity owned or controlled by a Party, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or
  2. a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.
- (d) 'new financial service' means a service of a financial nature, including services related to existing and new products or the manner in which a product is delivered, that is not supplied by any financial service supplier in the territory of a Party but which is supplied in the territory of the other Party

### *ARTICLE 40: PRUDENTIAL CARVE-OUT<sup>31</sup>*

1. Each Party may adopt or maintain measures for prudential reasons, including:
  - (a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;
  - (b) ensuring the integrity and stability of a Party's financial system.
2. These measures shall not be more burdensome than necessary to achieve their aim.
3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.
4. Without prejudice to other means of prudential regulation of cross-border trade in financial services, a Party may require the registration of cross-border financial service suppliers of the other Party and of financial instruments.

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<sup>31</sup> Any measure which is applied to financial service suppliers established in a Party's territory that are not regulated and supervised by the financial supervisory authority of that Party would be deemed to be a prudential measure for the purposes of this Agreement. For greater certainty, any such measure shall be taken in line with the provisions of this article.

*ARTICLE 41: EFFECTIVE AND TRANSPARENT REGULATION*

1. Each Party shall make its best endeavours to provide in advance to all interested persons any measure of general application that the Party proposes to adopt in order to allow an opportunity for such persons to comment on the measure. Such measure shall be provided:
  - (a) by means of an official publication; or
  - (b) in other written or electronic form.
2. Each Party shall make available to interested persons its requirements for completing applications relating to the supply of financial services.

On the request of an applicant, the concerned Party shall inform the applicant of the status of its application. If the concerned Party requires additional information from the applicant, it shall notify the applicant without undue delay.

Each Party shall make its best endeavours to ensure that internationally agreed standards for regulation and supervision in the financial services sector and for the fight against tax evasion and avoidance are implemented and applied in its territory. Such internationally agreed standards are, *inter alia*, the Basel Committee's "Core Principle for Effective Banking Supervision", the International Association of Insurance Supervisors' "Insurance Core Principles", the International Organisation of Securities Commissions' "Objectives and Principles of Securities Regulation", the OECD's "Agreement on exchange of information on tax matters", the G-20 "Statement on Transparency and exchange of information for tax purposes" and the Financial Action Task Force's "Forty Recommendations on Money Laundering" and "Nine Special recommendations on Terrorist Financing".

The Parties also take note of the "Ten Key Principles for Information Exchange" promulgated by the Finance Ministers of the G7 Nations, and will take all steps necessary to try to apply them in their bilateral contacts.

*ARTICLE 42: SELF-REGULATORY ORGANISATIONS*

When membership or participation in, or access to, any self-regulatory body, securities or futures exchange or market, clearing agency, or any other organization or association, is required by a Party in order for financial service suppliers of the other Party to supply financial services on an equal basis with financial service suppliers of the Party, or when the Party provides directly or indirectly such entities, privileges or advantages in supplying financial services, the Party shall ensure observance of the obligations of Articles 7.6, 7.8, 7.12 and 7.14 by such self-regulatory organisation.

*ARTICLE 43: PAYMENT AND CLEARING SYSTEMS*

Under terms and conditions that accord national treatment, each Party shall grant to financial services suppliers of the other Party established in its territory access to payment and clearing systems operated by public entities and to official funding and refinancing facilities available in the normal course of ordinary business. This paragraph is not intended to confer access to a Party's lender of last resort facilities.



*ARTICLE 44: NEW FINANCIAL SERVICES*

Each Party shall permit a financial service supplier of the other Party to provide any new financial service that the Party would permit its own financial service suppliers to provide under its domestic law in like circumstances. A Party may determine the juridical form through which the service may be provided and may require authorisation for the provision of the service. Where such authorisation is required, a decision shall be made within a reasonable time and the authorisation may only be refused for reasons mentioned under Article 40 of this Chapter.

*ARTICLE 45: DATA PROCESSING*

1. Each Party shall permit a financial service supplier of the other Party to transfer information in electronic or other form, into and out of its territory, for data processing where such processing is required in the ordinary course of business of such financial service supplier.
2. Each Party, reaffirming its commitment<sup>32</sup> to protect fundamental rights and freedom of individuals shall adopt adequate safeguards to protect privacy, in particular with regard to the transfer of personal data.

*ARTICLE 46: SPECIFIC EXCEPTIONS*

1. Nothing in this Section shall be construed to prevent a Party, including its public entities, from exclusively conducting or providing in its territory activities or services forming part of a public retirement plan or statutory system of social security, except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.
2. Nothing in this Agreement applies to activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies.
3. Nothing in this Section shall be construed as preventing a Party, including its public entities, from exclusively conducting or providing in its territory activities or services for the account or with the guarantee or using the financial resources of the Party, or its public entities except when those activities may be carried out, as provided by the Party's domestic regulation, by financial service suppliers in competition with public entities or private institutions.

**SUB-SECTION 6****INTERNATIONAL MARITIME TRANSPORT SERVICES**


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<sup>32</sup> For greater certainty, this commitment indicates the rights and freedoms set out in the Universal Declaration of Human Rights, the UN Guidelines for the Regulation of Computerised Personal Data Files (UN General Assembly Resolution 45/95 of 14 December 1990), and the OECD Recommendation of the Council concerning guidelines governing the protection of privacy and transborder flows of personal data (adopted by the Council on 23 September 1980).

## ARTICLE 47: SCOPE, DEFINITIONS AND PRINCIPLES

1. This Section sets out the principles regarding the liberalisation of international maritime transport services pursuant to Section 2, 3 and 4 of this Chapter.
2. For the purpose of this Subsection and Sections 2, 3 and 4 of this Chapter:
  - (a) "international maritime transport" includes door to door and multi-modal transport operations, which is the carriage of goods using more than one mode of transport, involving a sea-leg, under a single transport document, and to this effect the right to directly contract with providers of other modes of transport;
  - (b) "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
    - the loading/discharging of cargo to/from a ship;
    - the lashing/unlashing of cargo;
    - the reception/delivery and safekeeping of cargoes before shipment or after discharge;
  - (c) "customs clearance services" (alternatively 'customs house brokers' services') means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;
  - (d) "container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments;
  - (e) "maritime agency services" means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
    - marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
    - acting on behalf of the companies organising the call of the ship or taking over cargoes when required;
  - (f) "freight forwarding services" means (the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information).
  - (g) "feeder services" means the pre- and onward transportation of international cargoes by sea, notably containerised, between ports located in a party.

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3. As regards international maritime transport, the parties agree to ensure effective application of the principle of unrestricted access to cargoes on a commercial basis, the freedom to provide international maritime services, as well as national treatment in the framework of the provision of such services.

In view of the existing levels of liberalisation between the Parties in international maritime transport:

- (a) the Parties shall apply effectively the principle of unrestricted access to the international maritime markets and trades on a commercial and non-discriminatory basis;
- (b) each Party shall grant to ships flying the flag of the other Party or operated by service suppliers of the other Party treatment no less favourable than that accorded to its own ships or those of any third country, whichever are the better, with regard to, *inter alia*, access to ports, the use of infrastructure and services of ports, and the use of maritime auxiliary services, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.

4. In applying these principles, the parties shall:

- (a) not introduce cargo-sharing arrangements in future agreements with third countries concerning maritime transport services, including dry and liquid bulk and liner trade, and terminate, within a reasonable period of time, such cargo-sharing arrangements in case they exist in previous agreements; and
- (b) upon the entry into force of this Agreement, abolish and abstain from introducing any unilateral measures and administrative, technical and other obstacles which could constitute a disguised restriction or have discriminatory effects on the free supply of services in international maritime transport.

5. Each Party shall permit international maritime transport service suppliers of the other Party to have an establishment in its territory under conditions of establishment and operation no less favourable than those accorded to its own service suppliers or those of any third country, whichever are the better.

6. The Parties shall make available to maritime transport service suppliers of the other Party on reasonable and non discriminatory terms and conditions the following services at the port: pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.

7. Each Party shall permit the movement of equipment such as empty containers, not being carried as cargo against payment, between ports of Canada or between ports of a Member State of the Community.

8. Each Party, subject to the authorisation of the competent authority shall permit international maritime transport service suppliers of the other Party to provide feeder services between their national ports.

## SUB-SECTION 7

### ENERGY

[Text concerning the obligations and regulatory principles for energy services to be prepared by the EC for December 2009]

## SECTION 6

### ELECTRONIC COMMERCE

*(See separate consolidated text)*

## SECTION 7

### EXCEPTIONS

#### ARTICLE 50: GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on establishment or cross-border supply of services, nothing in this Chapter shall be construed to prevent the adoption or enforcement by either Party of measures:
  - (a) necessary to protect public security or public morals or to maintain public order<sup>33</sup>;
  - (b) necessary to protect human, animal or plant life or health;
  - (c) relating to the conservation of exhaustible natural resources if such measures are applied in conjunction with restrictions on domestic investors or on the domestic supply or consumption of services;
  - (d) necessary for the protection of national treasures of artistic, historic or archaeological value;
  - (e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
    - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
    - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
    - (iii) safety;

<sup>33</sup> The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

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- (f) inconsistent with Articles 7.6 and 7.12 on National Treatment, provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities, investors or services suppliers of the other Party<sup>34</sup>.

### ARTICLE 51: SECURITY EXCEPTIONS

Nothing in this Agreement shall be construed:

- (a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
  - (i) connected with the production of or trade in arms, munitions and war materials and related to traffic in other goods and materials and to economic activities carried out directly or indirectly for the purpose of supplying a military establishment;
  - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
  - (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

[provisions of this article might have to be changed or moved depending on whether there is horizontal security exception]

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<sup>34</sup> Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident investors and services suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
- (v) distinguish investors and service suppliers subject to tax on worldwide taxable items from other investors and service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in paragraph (f) of this provision and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

ANNEX 7A

LISTS OF COMMITMENTS

EC PARTY

1. List of commitments in conformity with Article 7.7 (cross-border supply of services)
2. List of commitments in conformity with Article 7.13 (establishment)
3. List of reservations in conformity with Article 7.18 (key personnel and graduate trainees)

CANADA

4. List of commitments in conformity with Article 7.7 (cross-border supply of services)
5. List of commitments in conformity with Article 7.13 (establishment)
6. List of commitments in conformity with Article 7.18 (key personnel and graduate trainees)

## INVESTMENT AND SERVICES

### CAN TEXT

#### CROSS-BORDER TRADE IN SERVICES

##### **Article X-01: Scope of Application**

1. This Chapter applies to measures adopted or maintained by a Party affecting cross-border trade in services by service suppliers of the other Party, including measures affecting:
  - (a) the production, distribution, marketing, sale and delivery of a service;
  - (b) the purchase or use of, or payment for, a service;
  - (c) the access to and use of distribution and transport systems in connection with the supply of a service;
  - (d) the presence in its territory of a service supplier of the other Party; and
  - (e) the provision of a bond or other form of financial security as a condition for the supply of a service.
2. This Chapter does not apply to:
  - (a) financial services as defined in Chapter XX (Financial Services);
  - (b) air services and related services in support of air services, other than:
    - (i) aircraft repair and maintenance services;
    - (ii) the selling and marketing of air transport services;
    - (iii) computer reservation system services;
  - (c) procurement by a Party or a state enterprise; or
  - (d) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance.
3. Nothing in this Chapter shall be construed to impose any obligation on a Party with respect to a national of the other Party seeking access to its employment market, or

employed on a permanent basis in its territory, or to confer any right on that national with respect to that access or employment.

#### **Article X-02: National Treatment**

1. Each Party shall accord to service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to its own service suppliers.
2. The treatment accorded by a Party under paragraph 1 means, with respect to measures adopted or maintained by a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to service suppliers of the Party of which it forms a part.

#### **Article X-03: Most-Favoured-Nation Treatment**

Each Party shall accord to service suppliers of the other Party treatment no less favourable than that it accords, in like circumstances, to service suppliers of a non-Party.

#### **Article X-04: Market Access**

Neither Party may adopt or maintain, either on the basis of its entire territory or on the basis of the territory of a sub-national government, measures that:

- (a) impose limitations on:
  - (i) the number of service suppliers, whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirement of an economic needs test;
  - (ii) the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
  - (iii) the total number of service operations or the total quantity of services output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;
  - (iv) the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; or,
- (b) restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service.

#### **Article X-05: Reservations**



1. Articles X-02 (National Treatment), X-03 (Most-Favoured-Nation Treatment) and X-04 (Market Access) do not apply to:

- (a) any existing non-conforming measure that is maintained by a Party at:
  - (i) the national level of government, as set out by that Party in its Schedule to Annex I;
  - (ii) a sub-national level of government, as set out by that Party in its Schedule to Annex I; or
  - (iii) a local level of government.
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles X-02 (National Treatment), X-03 (Most-Favoured-Nation Treatment) and X-04 (Market Access).

2. Articles X-02 (National Treatment), X-03 (Most-Favoured-Nation Treatment) and X-04 (Market Access) do not apply to measures that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

#### **Article X-06: Domestic Regulation**

The Parties note their mutual obligations related to domestic regulation in Article VI:4 of the WTO General Agreement on Trade in Services (GATS) and reaffirm their commitment respecting the development of any necessary disciplines on domestic regulation. To the extent that any disciplines on domestic regulation are adopted under the

GATS, the Parties will, as appropriate, review them jointly with a view to determining whether this Article should be supplemented.

#### **Article X-07: Denial of Benefits**

A Party may deny the benefits of this Chapter to a service supplier of the other Party:

- (i) where the Party establishes that the service is being supplied by an enterprise owned or controlled by nationals of a non-Party, and the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise; or,
- (ii) if the service supplier is an enterprise owned or controlled by persons of a non-Party that has no substantial business activities in the territory of the other Party.

**Article X-08: Definitions**

1. For purposes of this Chapter, a reference to a national or sub-national government includes any non-governmental body in the exercise of any regulatory, administrative or other governmental authority delegated to it by that government;

2. For purposes of this Chapter:

**aircraft repair and maintenance services** mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;

**computer reservation system services** mean services supplied by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

**cross-border trade in services** or **cross-border provision of services** means the supply of a service:

- (a) from the territory of one Party into the territory of the other Party;
- (b) in the territory of one Party by a person of that Party to a person of the other Party; or
- (c) by a national of a Party in the territory of the other Party,

but does not include the supply of a service in the territory of a Party by a covered investment as defined in Chapter XY (Investment – [relevant article]), in that territory;

**enterprise** means an enterprise as defined in Chapter XY (General Definitions), and a branch of an enterprise;

**enterprise of a Party** means an enterprise organized or constituted under the laws of a Party,  
and a branch located in the territory of a Party and carrying out business activities there;

**selling and marketing of air transport services** mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing

such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions; and

**service supplier of a Party** means a person of that Party that seeks to supply or supplies a service.

## INVESTMENT

## CHAPTER [XX]

## INVESTMENT

### Section A – Substantive Obligations

#### Article X.1: Scope and Coverage

1. This Chapter shall apply to measures adopted or maintained by a Party relating to:
  - (a) investors of the other Party;
  - (b) covered investments; and
  - (c) with respect to Articles X.8 (Performance Requirements), X.12 (Health, Safety and Environmental Measures) and X.13 (Corporate Social Responsibility), all investments in the territory of the Party.

#### Article X.2: Relation to Other Chapters

1. In the event of any inconsistency between this Chapter and another Chapter, the other Chapter shall prevail to the extent of the inconsistency.
2. A requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Chapter applicable to measures adopted or maintained by the Party relating to the provision of that cross-border service. This Chapter shall apply to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.
3. This Chapter does not apply to measures adopted or maintained by a Party to the extent that they are covered by Chapter [XY] (Financial Services).
4. Articles [X.04] (Cross-Border Trade in Services – Market Access) and [X.07] (Cross-Border Trade in Services – Domestic Regulation) are hereby incorporated into and made a part of this Chapter and apply to measures adopted or maintained by a Party affecting the supply of a service in its territory by a covered investment.<sup>35</sup>

#### Article X.3: National Treatment

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

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<sup>35</sup> It is understood by the Parties that any reservation taken by a Party pursuant to Article [X.05] (Cross-Border Trade in Services – Reservations) against Article [X.04] (Cross-Border Trade in Services – Market Access) applies to measures of that Party covered under Paragraph 4.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment no less favourable than the most favourable treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of the Party of which it forms a part.

## **Article X.4: Most-Favoured-Nation Treatment**

1. Each Party shall accord to investors of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favourable than that it accords, in like circumstances, to investments of investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

3. For greater certainty, the treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a sub-national government, treatment accorded, in like circumstances, by that sub-national government to investors, and to investments of investors, of a non-Party.

## Article X.5: Minimum Standard of Treatment

1. Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment of aliens, including fair and equitable treatment and full protection and security.

2. The concepts of “fair and equitable treatment” and “full protection and security” in paragraph 1 do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

3. A breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

## Article X.6: Compensation for Losses

Notwithstanding paragraph 4(b) of Article X.14 (Reservations and Exceptions), each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to compensation for losses suffered by investments in its territory owing to armed conflict, civil strife or a natural disaster.

## Article X.7: Senior Management and Boards of Directors

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.

2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment be of a particular nationality or be resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

## Article X.8: Performance Requirements

1. Neither Party may impose or enforce any of the following requirements, or enforce any commitment or undertaking, in connection with the establishment, acquisition, expansion, management, conduct or operation of an investment of an investor of a Party or of a non-Party in its territory to:

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- (a) export a given level or percentage of goods or services;
- (b) achieve a given level or percentage of domestic content;
- (c) purchase, use or accord a preference to goods produced or services provided in its territory, or to purchase goods or services from persons in its territory;
- (d) relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- (e) restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) transfer technology, a production process or other proprietary knowledge to a person in its territory; or
- (g) supply exclusively from the territory of the Party the goods that such investment produces or the services it provides to a specific regional market or to the world market.

2. A measure that requires an investment to use a technology to meet generally applicable health, safety or environmental requirements shall not be construed to be inconsistent with subparagraph 1(f). For greater certainty, Articles X.03 (National Treatment) and X.04 (Most-Favoured-Nation Treatment) apply to the measure.

3. Neither Party may condition the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with any of the following requirements:

- (a) to achieve a given level or percentage of domestic content;
- (b) to purchase, use or accord a preference to goods produced in its territory, or to purchase goods from producers in its territory;
- (c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or
- (d) to restrict sales of goods or services in its territory that such investment produces or provides by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

4. (a) Nothing in paragraph 3 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

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- (b) Subparagraph 1(f) does not apply when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of competition laws or to act in a manner not inconsistent with other provisions of this Agreement.

5. Paragraphs 1 and 3 do not apply to any commitment, undertaking, or requirement other than those set out in those paragraphs.

6. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties.

7. The provisions of:

- (a) subparagraphs 1(a), (b) and (c), and 3(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs;
- (b) subparagraphs 1(b), (c), (f) and (g), and 3(a) and (b), do not apply to procurement by a Party or a state enterprise; and
- (c) subparagraphs 3(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

## Article X.9: Expropriation

1. Neither Party may nationalize or expropriate a covered investment either directly, or indirectly through measures having an effect equivalent to nationalization or expropriation (hereinafter referred to as “expropriation”), except for a public purpose, in accordance with due process of law, in a non-discriminatory manner and on payment of compensation in accordance with paragraphs 2 and 3. For greater certainty, this paragraph shall be interpreted in accordance with Annex X.9.1 on the clarification of indirect expropriation.

2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (“date of expropriation”), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including the declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.

3. Compensation shall be paid without delay and shall be fully realizable and freely transferable. Compensation shall be payable in a freely convertible currency and shall include interest at a commercially reasonable rate for that currency accrued from the date of expropriation until the date of payment.

4. The affected investor shall have a right under the law of the expropriating Party to prompt review of its case and of the valuation of its investment by a judicial or other independent authority of that Party in accordance with the principles set out in this Article.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights, or to the revocation, limitation or creation of intellectual property rights, to the extent that such issuance, revocation, limitation or creation is consistent with the WTO Agreement.

## Article X.10: Transfers

1. Each Party shall permit all transfers relating to a covered investment to be made freely, and without delay, into and out of its territory. Such transfers include:

- (a) contributions to capital;
- (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns in kind and other amounts derived from the covered investment;
- (c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;
- (d) payments made under a contract entered into by the investor or the covered investment, including payments made pursuant to a loan agreement;
- (e) payments made pursuant to Articles X.6 (Compensation for Losses) and X.9 (Expropriation); and
- (f) payments arising under Section B.

2. Each Party shall permit transfers relating to a covered investment to be made in the convertible currency in which the capital was originally invested, or in any other convertible currency agreed to by the investor and the Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the market rate of exchange applicable on the date of transfer.

3. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities;
- (c) criminal or penal offences;
- (d) reports of transfers of currency or other monetary instruments; or



(e) ensuring the satisfaction of judgments in adjudicatory proceedings.

4. Neither Party may require its investors to transfer, or penalize its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, investments in the territory of the other Party.

5. Paragraph 4 shall not be construed to prevent a Party from imposing any measure through the equitable, non-discriminatory and good faith application of its laws relating to the matters in subparagraphs 3(a) through 3(e).

6. Notwithstanding paragraph 1, a Party may restrict transfers of returns in kind in circumstances where it could otherwise restrict such transfers under the WTO Agreement.

[NOTE: If the FTA does not include a Transparency Chapter, an article on transparency will be proposed as Article 11 of the Investment Chapter with its necessary exceptions.]

#### **Article X.11: Subrogation**

1. If a Party or any agency thereof makes a payment to any of its investors under a guarantee or a contract of insurance it has entered into in respect of an investment, the other Party shall recognize the validity of the subrogation in favour of the Party or agency to any right or title held by the investor.

2. A Party or any agency thereof, which is subrogated to the rights of an investor in accordance with paragraph 1, shall be entitled in all circumstances to the same rights as those of the investor in respect of the investment. Such rights may be exercised by the Party or any agency thereof, or by the investor if the Party or any agency thereof so authorizes.

#### **Article X.12: Health, Safety and Environmental Measures**

The Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a Party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding any such encouragement.

#### **Article X.13: Corporate Social Responsibility**

Each Party should encourage enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate internationally recognized standards of corporate social responsibility in their practices and internal policies, such as statements of principle that have been endorsed or are supported by the Parties. These principles address issues such as labour,

the environment, human rights, community relations and anti-corruption. The Parties remind those enterprises of the importance of incorporating such corporate social responsibility standards in their practices and internal policies.

#### **Article X.14: Reservations and Exceptions**

1. Articles X.3 (National Treatment), X.4 (Most-Favoured-Nation Treatment), X.7 (Senior Management and Boards of Directors) and X.8 (Performance Requirements) do not apply to:

- (a) any existing non-conforming measure that is maintained by:
  - (i) the national level of government, as set out by that Party in its Schedule to Annex I,
  - (ii) a sub-national level of government, as set out by that Party in its Schedule to Annex I, or
  - (iii) a local level of government;
- (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
- (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles X.3 (National Treatment), X.4 (Most-Favoured-Nation Treatment), X.7 (Senior Management and Board of Directors) and X.8 (Performance Requirements).

2. Articles X.3 (National Treatment), X.4 (Most-Favoured-Nation Treatment), X.7 (Senior Management and Board of Directors) and X.8 (Performance Requirements) do not apply to any measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its Schedule to Annex II.

3. In respect of intellectual property rights, a Party may derogate from Article X.3 (National Treatment), Article X.4 (Most-Favoured-Nation Treatment) and subparagraph 1(f) of Article X.8 (Performance Requirements) in a manner that is consistent with the TRIPS Agreement, including any amendments to the TRIPS Agreement in force for both Parties, and waivers to the TRIPS Agreement adopted pursuant to Article IX of the WTO Agreement.

4. Articles X.3 (National Treatment), X.4 (Most-Favoured-Nation Treatment) and X.7 (Senior Management and Board of Directors) do not apply to:

- (a) procurement by a Party or a state enterprise; or
- (b) subsidies or grants provided by a Party or a state enterprise, including government-supported loans, guarantees and insurance.

**Article X.15: Special Formalities and Information Requirements**

1. Nothing in Article X.3 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with the establishment of covered investments, such as a requirement that investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Chapter.

2. Notwithstanding Articles X.3 (National Treatment) and X.4 (Most-Favoured-Nation Treatment), a Party may require an investor of the other Party, or its covered investment, to provide information concerning that investment solely for informational or statistical purposes, provided that such requests are reasonable and not unduly burdensome. The Party shall protect any confidential information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its laws.

**Article X.16: Denial of Benefits**

1. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to investments of that investor if investors of a non-Party own or control the enterprise and the denying Party adopts or maintains measures with respect to the non-Party that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Chapter were accorded to the enterprise or to its investments.

2. A Party may deny the benefits of this Chapter to an investor of the other Party that is an enterprise of that Party and to investments of that investor if investors of a non-Party or of the denying Party own or control the enterprise and the enterprise has no substantial business activities in the territory of the Party under whose law it is constituted or organized.

**Section B – Settlement of Disputes between an Investor and the Host Party****Article X.17: Purpose**

Without prejudice to the rights and obligations of the Parties under Chapter [XY] (Dispute Settlement), this Section establishes a mechanism for the settlement of investment disputes.

**Article X.18: Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise**

1. An investor of a Party may submit to arbitration under this Section a claim that the respondent Party has breached:

- (a) an obligation under Section A, other than an obligation under Article X.2(4) (Relation to Other Chapters), X.12 (Health, Safety and Environmental Measures), X.13 (Corporate Social Responsibility) or X.15 (Special Formalities and Information Requirements); or
- (b) an obligation under Article [X.02(3)(a)] (Competition Policy, Monopolies and State Enterprises – Monopolies) or [X.03(2)] (Competition Policy, Monopolies and State Enterprises – State Enterprises), only to the extent that a monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section A, other than an obligation under Article X.2(4) (Relation to Other Chapters), X.12 (Health, Safety and Environmental Measures), X.13 (Corporate Social Responsibility) or X.15 (Special Formalities and Information Requirements),

and that the investor has incurred loss or damage by reason of, or arising out of, that breach.

2. An investor of a Party, on behalf of an enterprise of the respondent Party that is a juridical person that the investor owns or controls directly or indirectly, may submit to arbitration under this Section a claim that the respondent Party has breached:

- (a) an obligation under Section A, other than an obligation under Article X.2(4) (Relation to Other Chapters), X.12 (Health, Safety and Environmental Measures), X.13 (Corporate Social Responsibility) or X.15 (Special Formalities and Information Requirements); or
- (b) an obligation under Article [X.02(3)(a)] (Competition Policy, Monopolies and State Enterprises – Monopolies) or [X.03(2)] (Competition Policy, Monopolies and State Enterprises – State Enterprises), only to the extent that a monopoly or state enterprise has acted in a manner inconsistent with the Party's obligations under Section A, other than an obligation under Article X.2(4) (Relation to Other Chapters), X.12 (Health, Safety and Environmental Measures), X.13 (Corporate Social Responsibility) or X.15 (Special Formalities and Information Requirements),

and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach.

3. An investor of a Party cannot submit or continue to pursue a claim under this Section where:

- (a) the investor is also a national of a non-Party and submits or has submitted a claim with respect to the same measure or series of measures under any agreement between the respondent Party and that non-Party; or
- (b) the investment of the investor in the territory of the respondent Party is held indirectly through an investor of a non-Party, and the investor of the non-Party submits or has submitted a claim with respect to the same measure or series of measures under any agreement between the respondent Party and that non-Party.

## **Article X.19: Conditions Precedent to Submission of a Claim to Arbitration**

1. The disputing parties shall hold consultations in an attempt to resolve the issue amicably before an investor may submit a claim to arbitration. Consultations shall be held within 30 days of the submission of the notice of intent to submit a claim to arbitration under subparagraph 2(c), unless the disputing parties otherwise agree. The place of consultation shall be the capital of the respondent Party unless the disputing parties otherwise agree.

2. An investor may submit a claim to arbitration under Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) only if:

- (a) the investor and, where a claim is made under paragraph 2 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), the enterprise, consent to arbitration in accordance with the procedures set out in this Agreement;
- (b) at least six months have elapsed since the events giving rise to the claim;
- (c) the investor has delivered to the respondent Party a written notice of its intent to submit a claim to arbitration at least 90 days prior to submitting the claim, which notice shall specify:
  - (i) the name and address of the investor and, where a claim is made under paragraph 2 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise), the name and address of the enterprise,
  - (ii) the provisions of this Agreement alleged to have been breached and any other relevant provisions,
  - (iii) the legal and the factual basis for the claim, including the measures at issue, and
  - (iv) the relief sought and the approximate amount of damages claimed;

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- (d) the investor has delivered evidence establishing that it is an investor of the other Party with its notice of intent to submit a claim to arbitration under subparagraph 2(c);

and

- (e) in the case of a claim submitted under paragraph 1 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise):
  - (i) not more than three years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the investor has incurred loss or damage thereby, and
  - (ii) the investor and, where the claim is for loss or damage to an interest in an enterprise of the respondent Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the respondent Party that is alleged to be a breach referred to in Article X.18, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the respondent Party;
- (f) in the case of a claim submitted under paragraph 2 of Article X.18 (Claim by an Investor of a Party on its Own Behalf or on Behalf of an Enterprise):
  - (i) not more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise has incurred loss or damage thereby, and
  - (ii) both the investor and the enterprise waive their right to initiate or continue before any administrative tribunal or court under the law of either Party, or other dispute settlement procedures, any proceedings with respect to the measure of the respondent Party that is alleged to be a breach referred to in Article X.18, except for proceedings for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the respondent Party.

3. A consent and waiver required under paragraph 2 shall be delivered to the respondent Party and shall be included in the submission of a claim to arbitration. A waiver from the enterprise under subparagraphs 2(e)(ii) or 2(f)(ii) shall not be required only if a respondent Party has deprived the investor of control of an enterprise.

**Article X.20: Submission of a Claim to Arbitration**

1. An investor that meets the conditions precedent in Article X.19 (Conditions Precedent to Submission of a Claim to Arbitration) may submit a claim to arbitration under:

- (a) the ICSID Convention and the ICSID Rules of Procedures for Arbitration Proceedings, provided that both the respondent Party and the Party of the investor are parties to the ICSID Convention;
- (b) the Additional Facility Rules of ICSID, provided that either the respondent Party or the Party of the investor, but not both, is a party to the ICSID Convention; or
- (c) the UNCITRAL Arbitration Rules.

2. The Commission shall have the power to make rules supplementing the applicable arbitral rules and may amend any supplemental rules of its own making. Such rules shall be binding on a Tribunal established under this Section, and on individual arbitrators serving on such a Tribunal.

3. The arbitration rules applicable under paragraph 1 shall govern the arbitration, except to the extent modified by this Agreement and as supplemented by any rules adopted by the Commission under paragraph 2.

4. A claim is submitted to arbitration under this Section when:

- (a) the request for arbitration under paragraph 1 of Article 36 of the ICSID Convention is received by the Secretary-General of ICSID;
- (b) the notice of arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretary-General of ICSID; or
- (c) the notice of arbitration under Article 3 of the UNCITRAL Arbitration Rules is received by the respondent Party.

5. Each Party shall notify the other Party by diplomatic note of the place of delivery of notices and other documents.

**Article X.21: Consent to Arbitration**

1. Each Party consents to the submission of a claim to arbitration in accordance with the procedures set out in this Section. Failure to meet any of the conditions precedent in Article X.19 (Conditions Precedent to Submission of a Claim to Arbitration) shall nullify that consent.

2. The consent given in paragraph 1 and the submission by an investor of a claim to arbitration shall satisfy the requirement of:



- (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute; and
- (b) Article II of the New York Convention for an agreement in writing.

**Article X.22: Arbitrators**

1. Except in respect of a Tribunal established under Article X.24 (Consolidation), and unless the disputing parties agree otherwise, the Tribunal shall comprise three arbitrators. One arbitrator shall be appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, shall be appointed by agreement of the disputing parties.

2. Arbitrators shall have expertise or experience in public international law, international investment or international trade rules, or the resolution of disputes arising under international investment or international trade agreements. Arbitrators shall be independent of, and not be affiliated with or take instructions from, either disputing party.

3. If the disputing parties do not agree on the remuneration of the arbitrators before the constitution of the Tribunal, the prevailing ICSID rate for arbitrators shall apply.

4. If a Tribunal, other than a Tribunal established under Article X.24 (Consolidation), has not been constituted within 90 days after the date that a claim is submitted to arbitration, either disputing party may ask the Secretary-General of ICSID to appoint, in his or her discretion and, to the extent practicable, in consultation with the disputing parties, the arbitrator or arbitrators not yet appointed, except that the presiding arbitrator shall not be a national of either Party.

**Article X.23: Agreement to Appointment of Arbitrators**

1. For purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on paragraph 2 of Article X.22 (Arbitrators) or on a ground other than nationality:

- (a) the respondent Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
- (b) an investor referred to in paragraph 1 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the disputing investor agrees in writing to the appointment of each member of the Tribunal; and
- (c) an investor referred to in paragraph 2 of Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise) may submit a claim to arbitration, or continue a claim, under the ICSID Convention or the ICSID Additional Facility Rules, only if the investor and the enterprise agree in writing to the appointment of each member of the Tribunal.

**Article X.24: Consolidation**

1. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with those Rules, except as modified by this Section.

2. Where a Tribunal established under this Article is satisfied that claims submitted to arbitration under Article X.20 (Submission of a Claim to Arbitration) have a question of law or fact in common, the Tribunal may, in the interest of fair and efficient resolution of the claims and after hearing the disputing parties, by order:

- (a) assume jurisdiction over, and hear and determine together, all or part of the claims; or
- (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in the resolution of the others.

3. A disputing party that seeks an order under paragraph 2 shall request that the Secretary-General of ICSID establish a Tribunal and shall specify in the request:

- (a) the name of the respondent Party or investors against which the order is sought;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

4. The disputing party shall deliver a copy of the request to the respondent Party or investors against which the order is sought.

5. Within 60 days of receipt of the request, the Secretary-General of ICSID shall establish a Tribunal comprising three arbitrators. The Secretary-General of ICSID shall appoint one member who is a national of the respondent Party, one member who is a national of the Party of the investors that submitted the claims, and a presiding arbitrator who is not a national of either Party.

6. Where a Tribunal has been established under this Article, an investor that has submitted a claim to arbitration under Article X.20 (Submission of a Claim to Arbitration) and that has not been named in a request made under paragraph 3 may make a written request to the Tribunal that it be included in any order made under paragraph 2, and shall specify in the request:

- (a) the name and address of the investor;
- (b) the nature of the order sought; and
- (c) the grounds on which the order is sought.

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7. An investor referred to in paragraph 6 shall deliver a copy of its request to the disputing parties named in a request under paragraph 3.

8. A Tribunal established under Article X.20 (Submission of a Claim to Arbitration) shall not have jurisdiction to decide a claim, or a part of a claim, over which a Tribunal established or instructed under this Article has assumed jurisdiction.

9. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 2, may order that the proceedings of a Tribunal established under Article X.20 (Submission of a Claim to Arbitration) be stayed unless the latter Tribunal has already adjourned its proceedings.

### **Article X.25: Documents to, and Participation of, the Other Party**

1. The respondent Party shall deliver to the other Party to this Agreement a copy of the notice of intent to submit a claim to arbitration and other documents no later than 30 days after the date that such documents have been delivered to the respondent Party. The other Party shall be entitled, at its cost, to receive from the respondent Party a copy of the evidence that has been tendered to the Tribunal, copies of pleadings filed in the arbitration, and written argument of the disputing parties. The Party receiving such information shall treat the information as if it were a respondent Party.

2. The other Party shall have the right to attend any hearings held under this Section. Upon written notice to the disputing parties, the other Party may make submissions to a Tribunal on a question of interpretation of this Agreement.

### **Article X.26: Place of Arbitration**

The disputing parties may agree on the place of arbitration under the arbitral rules applicable under paragraph 1 of Article X.20 (Submission of a Claim to Arbitration). If the disputing parties fail to reach agreement, the Tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of either Party or of a non-Party that is a party to the New York Convention.

### **Article X.27: Public Access to Hearings and Documents**

1. Any Tribunal award under this Section shall be publicly available, subject to the redaction of confidential information. All other documents submitted to, or issued by, the Tribunal shall be publicly available unless the disputing parties otherwise agree, subject to the redaction of confidential information.

2. Hearings held under this Section shall be open to the public. The Tribunal may hold portions of hearings *in camera* to the extent necessary to ensure the protection of confidential information.

3. A disputing party may disclose to other persons in connection with the arbitral proceedings such unredacted documents as it considers necessary for the preparation of its case, but it shall ensure that those persons protect the confidential information in such documents.

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4. The Parties may share with officials of their respective national and sub-national governments all relevant unredacted documents in the course of dispute settlement under this Chapter, but they shall ensure that those persons protect any confidential information in such documents.

5. To the extent that a Tribunal's confidentiality order designates information as confidential and a Party's law on access to information requires public access to that information, the Party's law on access to information shall prevail. However, a Party should endeavour to apply its law on access to information so as to protect information designated confidential by the Tribunal.

6. Nothing in this Section shall be construed to require a Party to furnish or allow access to information that it may withhold in accordance with Article [X.02] (Exceptions – National Security) or Article [X.05] (Exceptions – Disclosure of Information).

### **Article X.28: Submissions by a third party**

1. A Tribunal shall have the authority to consider and accept written submissions from a person or entity that is not a disputing party and that has a significant interest in the arbitration. The Tribunal shall ensure that any third-party submission does not disrupt the proceedings and does not unduly burden or unfairly prejudice either disputing party.

2. An application to the Tribunal for leave to file a third-party submission, and the filing of a submission if allowed by the Tribunal, shall be made in accordance with Annex X.28.

### **Article X.29: Governing Law**

1. A Tribunal established under this Section shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law. An interpretation by the Commission of a provision of this Agreement shall be binding on a Tribunal established under this Section, and any award under this Section shall be consistent with such interpretation.

2. Where a respondent Party asserts as a defence that the measure alleged to be a breach is within the scope of a reservation or exception set out in Annex I or Annex II, on request of the respondent Party, the Tribunal shall request the interpretation of the Commission on the issue. Within 60 days of the delivery of the request, the Commission shall submit in writing its interpretation to the Tribunal. The interpretation shall be binding on the Tribunal. If the Commission fails to submit its interpretation within 60 days, the Tribunal shall decide the issue.

### **Article X.30: Expert Reports**

Without prejudice to the appointment of other kinds of experts where authorized by the applicable arbitration rules, and unless both disputing parties disagree, a Tribunal may appoint experts to report to it in writing on any factual issue concerning environmental, health, safety or other scientific matters raised by a disputing party, subject to such terms and

conditions as the disputing parties may agree.

**Article X.31: Interim Measures of Protection and Final Award**

1. A Tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal may not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article X.18 (Claim by an Investor of a Party on Its Own Behalf or on Behalf of an Enterprise). For purposes of this paragraph, an order includes a recommendation.

2. Where a Tribunal makes a final award against the respondent Party, the Tribunal may award, separately or in combination, only:

- (a) monetary damages and any applicable interest; and
- (b) restitution of property, in which case the award shall provide that the respondent Party may pay monetary damages and any applicable interest in lieu of restitution.

The Tribunal may also award costs in accordance with the applicable arbitration rules.

3. Subject to paragraph 2, where a claim is made under paragraph 2 of Article X.18 (Claim by an Investor of a Party on Behalf of an Enterprise):

- (a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise;
- (b) an award of restitution of property shall provide that restitution be made to the enterprise; and
- (c) the award shall provide that it is made without prejudice to any right that any person may have in the relief under applicable domestic law.

4. A Tribunal may not award punitive damages.

**Article X.32: Finality and Enforcement of an Award**

1. An award made by a Tribunal shall have no binding force except between the disputing parties and in respect of that particular case.

2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.

3. A disputing party may not seek enforcement of a final award until:

- (a) in the case of a final award made under the ICSID Convention:
  - (i) 120 days have elapsed from the date the award was rendered and no disputing party has requested revision or annulment of the award, or

- (ii) revision or annulment proceedings have been completed; and
- (b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:
  - (i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside or annul the award, or
  - (ii) a court has dismissed or allowed an application to revise, set aside or annul the award and there is no further appeal.

4. Each Party shall provide for the enforcement of an award in its territory.

5. A claim that is submitted to arbitration under this Section shall be considered to arise out of a commercial relationship or transaction for purposes of Article I of the New York Convention.

#### **Article X.33: Receipts under Insurance or Guarantee Contracts**

In an arbitration under this Section, a respondent Party shall not assert as a defence, counterclaim, right of setoff, or for any other reason that the disputing investor has received or will receive, pursuant to an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

#### **Article X.34: Exclusions**

The dispute settlement provisions of this Section and of Chapter [XY] (Dispute Settlement) do not apply to the matters referred to in Annex X.34 (Exclusions from Dispute Settlement).

## Section C – Definitions

### Article X.35: Definitions

For the purpose of this Chapter:

**confidential information** means confidential business information and information that is privileged or otherwise protected from disclosure under the law of a Party;

**covered investment** means, with respect to a Party, an investment in its territory of an investor of the other Party on the date of entry into force of this Agreement, as well as investments made or acquired thereafter;

**disputing party** means either the respondent Party or the investor that has made a claim under Section B;

**enterprise** means an enterprise as defined in Article [X.05] (Initial Provisions and General Definitions – Definitions of General Application), and a branch of any such entity;

**existing** means in effect on the date of entry into force of this Agreement;

**ICSID** means the International Centre for Settlement of Investment Disputes established by the ICSID Convention;

**ICSID Convention** means the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*, done at Washington on 18 March 1965;

**intellectual property rights** means copyright and related rights, trademark rights, rights in geographical indications, rights in industrial designs, patent rights, rights in layout designs of integrated circuits, rights in relation to protection of undisclosed information, and plant breeders' rights;

**investment** means:

- (a) an enterprise;
- (b) shares, stocks and other forms of equity participation in an enterprise;
- (c) bonds, debentures and other debt instruments of an enterprise;
- (d) a loan to an enterprise;
- (e) an interest in an enterprise that entitles the owner to a share in income or profits of the enterprise;
- (f) an interest in an enterprise that entitles the owner to share in the assets of that

enterprise on dissolution;

- (g) interests arising from the commitment of capital or other resources in the territory of a Party to economic activity in such territory, such as under:
  - (i) contracts involving the presence of an investor's property in the territory of the Party, including turnkey or construction contracts, or concessions, or
  - (ii) contracts where remuneration depends substantially on the production, revenues or profits of an enterprise;
- (h) intellectual property rights; and
- (i) any other tangible or intangible, moveable or immovable, property and related property rights acquired in the expectation of or used for the purpose of economic benefit or other business purpose;

but **investment does not mean,**

- (j) claims to money arising solely from:
  - (i) commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party, or
  - (ii) the extension of credit in connection with a commercial transaction, such as trade financing, other than a loan covered by subparagraph (d); or
- (k) any other claims to money,

that do not involve the kinds of interests set out in subparagraphs (a) to (i);

**investment of an investor of a Party** means an investment owned or controlled directly or indirectly by an investor of such Party;

**investor of a Party** means a Party, or a national or an enterprise of a Party, that seeks to make, is making or has made an investment;

**measure** includes any law, regulation, procedure, requirement or practice;

**national** means:

- (a) in the case of Canada, a natural person who is a citizen or permanent resident of Canada, and
- (b) in the case of ...

except that:



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a natural person who is a dual citizen of Canada and \_\_\_\_\_ shall be deemed to be exclusively a national of the Party of his or her dominant and effective nationality; and

a natural person who is a citizen of one Party and a permanent resident of the other Party shall be deemed to be exclusively a national of the Party of his or her citizenship;

**New York Convention** means the *United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on 10 June 1958;

**person** means a natural person or an enterprise;

**respondent Party** means a Party against which a claim is made under Section B;

**Tribunal** means an arbitration tribunal established under Article X.20 (Submission of a Claim to Arbitration) or X.24 (Consolidation); and

**UNCITRAL Arbitration Rules** means the arbitration rules of the United Nations Commission on International Trade Law, approved by the United Nations General Assembly on 15 December 1976.

## Indirect Expropriation

The Parties confirm their shared understanding that:

1. Indirect expropriation results from a measure or series of measures of a Party that has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

2. The determination of whether a measure or series of measures of a Party constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

- (a) the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred;
- (b) the extent to which the measure or series of measures interferes with distinct, reasonable investment-backed expectations; and
- (c) the character of the measure or series of measures.

3. Except in rare circumstances, such as when a measure or series of measures is so severe in the light of its purpose that it cannot be reasonably viewed as having been adopted and applied in good faith, non-discriminatory measures by a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriations.

**Annex X.28****Submissions by a third party**

1. The application for leave to file a third-party submission shall:
  - (a) be made in writing, dated and signed by the applicant, and include the applicant's address and other contact details;
  - (b) be no longer than five typed pages;
  - (c) describe the applicant, including, where relevant, its membership and legal status (*e.g.*, company, trade association or other non-governmental organization), its general objectives, the nature of its activities, and any parent organization (including any organization that directly or indirectly controls the applicant);
  - (d) disclose whether the applicant has any affiliation, direct or indirect, with any disputing party;
  - (e) identify any government, person or organization that has provided any financial or other assistance in preparing the submission;
  - (f) demonstrate that the applicant has a significant interest and specify the nature of this interest in the arbitration;
  - (g) identify the specific issues of fact or law in the arbitration that the applicant will address in its written submission;
  - (h) explain why the Tribunal should accept the submission; and
  - (i) be made in a language of the arbitration.
2. The submission filed by a third party shall:
  - (a) be dated and signed by the person filing the submission;
  - (b) be concise, and in no case longer than 20 typed pages, including any appendices;
  - (c) set out a precise statement supporting the applicant's position on the issues; and
  - (d) only address matters within the scope of the dispute.

## Annex X-34.1

**Exclusions from Dispute Settlement**

1. A decision by Canada following a review under the *Investment Canada Act*, with respect to whether or not to permit an acquisition that is subject to review, shall not be subject to the dispute settlement provisions of Section B of this Chapter or of Chapter [XY] (Dispute Settlement).
2. A decision by a Party to prohibit or restrict the acquisition of an investment in its territory by an investor of the other Party, or its investment, pursuant to Article [X.02] (Exceptions – National Security) shall not be subject to the dispute settlement provisions of Section B of this Chapter or of Chapter [XY] (Dispute Settlement).

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## CAN TEXT

**TEMPORARY ENTRY FOR BUSINESS PERSONS****Article X-01: General Principles**

This Chapter reflects the preferential trading relationship between the Parties, the mutual objective to facilitate temporary entry for business persons on a reciprocal basis and to establish transparent criteria and procedures for temporary entry, and the need to ensure border security and to protect the domestic labour force and permanent employment in their respective territories.

**Article X-02: General Obligations**

Each Party shall apply its measures relating to the provisions of this Chapter in accordance with Article X-01 and, in particular, shall apply expeditiously those measures so as to avoid unduly impairing or delaying trade in goods or services or conduct of investment activities under this Agreement.

**Article X-03: Grant of Temporary Entry**

1. Each Party shall grant temporary entry to business persons who otherwise comply with its immigration measures applicable to temporary entry in accordance with this Chapter, including the provisions of Annex X-03.
2. A Party may refuse to issue a work permit or authorization to a business person where the temporary entry of that person might affect adversely:
  - (a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or
  - (b) the employment of any person who is involved in such dispute.
3. Each Party shall limit any fees for processing applications for temporary entry of business persons to the approximate cost of services rendered.

**Article X-04: Provision of Information**

1. Further to Article X (Transparency - Publication), and recognizing the importance to the Parties of transparency of temporary entry information, each Party shall:
  - (a) provide to the other Party relevant materials as will enable the other Party to become acquainted with its measures relating to this Chapter; and

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- (b) no later than six months after the date of entry into force of this Agreement, make available explanatory material regarding the requirements for temporary entry under this Chapter, in such a manner as will enable business persons of the other Party to become acquainted with those requirements.

- 2. Each Party shall collect and maintain, and, on request, make available to the other Party in accordance with its domestic law, data respecting the granting of temporary entry under this Chapter to business persons of the other Party who have been issued immigration documentation.

### Article X-05: Contact Points

- 1. The Parties hereby establish the following Contact Points:

- (a) in the case of Canada:

Director  
Temporary Resident Policy  
Immigration Branch  
Citizenship and Immigration Canada

- (b) in the case of the European Commission:  
[...]

or their respective successors.

- 2. The Contact Points shall exchange information as described in Article X-04 and shall meet as required to consider matters pertaining to this Chapter, such as:

- (a) the implementation and administration of this Chapter;
- (b) the development and adoption of common criteria as well as interpretations for the implementation of the Chapter;
- (c) the development of measures to further facilitate temporary entry of business persons on a reciprocal basis; and
- (d) proposed modifications to this Chapter.

### Article X-06: Dispute Settlement

- 1. A Party may not initiate proceedings under Chapter XY (Dispute Settlement) regarding a refusal to grant temporary entry under this Chapter unless:

- (a) the matter involves a pattern of practice;
- (b) the business person of that Party has exhausted the normal administrative remedies regarding the particular matter; and
- (c) the Contact Points have been unable to resolve the issue.

2. The remedies referred to in paragraph (1) (b) shall be deemed to be exhausted if a final determination in the matter has not been issued by the competent authority within one year of the institution of an administrative proceeding, and the failure to issue a determination is not attributable to delay caused by the business person.

#### Article X-07: Relation to Other Chapters

Except for:

- (a) this Chapter and other Chapters in this Agreement, that is, Chapters XY (Objectives), XY (General Definitions), XY (Transparency), XY (Institutional Arrangements) and XY (Final Provisions), and
- (b) Articles X-1(Contact Points) and X-4 (Administrative Proceedings),

no provision of this Agreement shall impose any obligation on a Party regarding its immigration measures.

#### Article X-08: Definitions

For purposes of this Chapter:

**business person** means a national of a Party who is engaged in trade in goods, the supply of services or the conduct of investment activities;

**management trainee on professional development** means an employee with a post-secondary degree who is on a temporary work assignment intended to broaden that employee's knowledge of and experience in a company in preparation for a senior leadership position within the company;

**professional** means a national of a Party who is engaged in a specialty occupation<sup>36</sup> requiring:

- (a) theoretical and practical application of a body of specialized knowledge, and the appropriate certification or license to practice; and
- (b) attainment of a post-secondary degree in the specialty requiring four or more years of study as a minimum for entry into the occupation<sup>37</sup> ;

**specialist** means an employee who possesses specialized knowledge of the company's products or services and its application in international markets, or an advanced level of expertise or knowledge of the company's processes and procedures;

**technician** means a national of a Party who is engaged in a specialty occupation<sup>38</sup> requiring:

<sup>36</sup> With respect to Canada, a professional specialty occupation shall mean an occupation which falls within the National Occupation Classification (NOC) levels O and A.

<sup>37</sup> With respect to Canada, these requirements are defined in the NOC.

<sup>38</sup> With respect to Canada, a technical specialty occupation is an occupation which falls within the NOC level B.

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- (a) theoretical and practical application of a body of specialized knowledge, and the appropriate certification or license to practice; and
- (b) attainment of a post-secondary or technical degree requiring one or more years of study, or the equivalent of such a degree, as a minimum for entry into the occupation<sup>39</sup>; and

**temporary entry** means entry into the territory of a Party by a business person of the other Party without the intent to establish permanent residence.

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<sup>39</sup> With respect to Canada, these requirements are defined in the NOC.



**CAN TEXT**

**TEMPORARY ENTRY FOR BUSINESS PERSONS**

**Section A - Business Visitors**

1. Each Party shall grant temporary entry to a business person seeking to engage in a business activity set out in Appendix X-03.A.1, without requiring that person to obtain a work permit or other authorization, provided that the business person otherwise complies with its immigration measures applicable to temporary entry, on presentation of:

- (a) proof of citizenship or permanent resident status of a Party;
- (b) documentation demonstrating that the business person will be engaged in a business activity set out in Appendix X-03.A.1 and describing the purpose of entry; and
- (c) evidence demonstrating that the proposed business activity is international in scope and the business person is not seeking to enter the local labour market.

2. Each Party shall provide that a business person may satisfy the requirements of paragraph 1(c) by demonstrating that:

- (a) the primary source of remuneration for the proposed business activity is outside the territory of the Party granting temporary entry; and
- (b) the business person's principal place of business and the actual place of accrual of profits, at least predominantly, remain outside the territory of the Party granting temporary entry.

A Party shall normally accept an oral declaration as to the principal place of business and the actual place of accrual of profits. Where the Party requires further proof, it shall normally consider a letter from the employer attesting to these matters as sufficient proof.

3. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labour certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

4. Notwithstanding paragraph 3, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

**Section B – [Traders and]40 Investors**

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a business person seeking to:

- (a) [carry on substantial trade in goods or services principally between the territory of the Party of which the business person is a national and the territory of the Party into which entry is sought, or]41
- (b) establish, develop, administer or provide advice or key technical services to the operation of an investment to which the business person or the business person's enterprise has committed, or is in the process of committing, a substantial amount of capital,

in a capacity that is supervisory, executive or involves essential skills, provided that the business person otherwise complies with its immigration measures applicable to temporary entry.

2. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

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40 This category, including the definition, is currently under review.

41 Ibid

**Section C - Intra-Company Transferees**

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a business person employed by an enterprise in the territory of the other Party who seeks to render services to that enterprise's subsidiary or affiliate in its territory as an executive or manager, a specialist or a management trainee on professional development, provided that the business person otherwise complies with the immigration measures applicable to temporary entry. A Party may require the business person to have been employed continuously by the enterprise for one year within the three-year period immediately preceding the date of the application for admission.

2. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require labour certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

**Section D – Professionals and Technicians**

1. Each Party shall grant temporary entry and provide a work permit or other authorization to a business person seeking to engage in an occupation at a professional or technical level in accordance with Appendix X-03.D.1, provided the business person otherwise complies with its immigration measures applicable to temporary entry, on presentation of:

- (a) proof of citizenship or permanent resident status of a Party; and
- (b) documentation demonstrating that the business person is seeking to enter the other Party to provide pre-arranged professional services in the field for which the business person has the appropriate qualifications.

2. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labour certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose business persons would be affected with a view to avoiding the imposition of the requirement.

**Section E – Spouses**

1. Each Party shall grant temporary entry and provide a work permit or other authorization to the spouse of a business person qualifying for temporary entry under Section B (Traders and Investors), Section C (Intra-Company Transferees) or Section D (Professionals and Technicians), provided the spouse otherwise complies with existing immigration measures applicable to temporary entry.

2. Neither Party may:

- (a) as a condition for temporary entry under paragraph 1, require prior approval procedures, labour certification tests or other procedures of similar effect; or
- (b) impose or maintain any numerical restriction relating to temporary entry under paragraph 1.

3. Notwithstanding paragraph 2, a Party may require the spouse of a business person seeking temporary entry under this Section to obtain a visa or an equivalent requirement prior to entry. Before imposing a visa or an equivalent requirement, the Party shall consult with the other Party whose nationals would be affected with a view to avoiding the imposition of the requirement.

**Appendix X-03.A.1  
Business Visitors****Meetings and Consultations**

Business persons attending meetings, seminars or conferences, or engaged in consultations with business associates.

**Research and Design**

Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of the other Party.

**Growth, Manufacture and Production**

Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of the other Party.

**Marketing**

Market researchers and analysts conducting independent research or analysis or research or analysis for an enterprise located in the territory of the other Party.

Trade-fair and promotional personnel attending a trade convention.

**Sales**

Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of the other Party but not delivering goods or providing services.

Buyers purchasing for an enterprise located in the territory of the other Party.

**Distribution**

Transportation operators transporting goods or passengers from the territory of a Party to the territory of the other Party or loading and transporting goods or passengers from the territory of a Party, with no unloading in that territory, to the territory of the other Party.

Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

**After-Sales or After-Lease Service**

Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale or lease of commercial or industrial equipment or machinery, including computer software, purchased or leased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.

**General Service**

Professionals and technicians engaging in a business activity at a professional or technician level as set out in Appendix X-03.D.

Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of the other Party.

Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of the other Party.

Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.

Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.

Translators or interpreters performing services as employees of an enterprise located in the territory of another Party.

## APPENDIX [X-03.D.1]

## PROFESSIONALS AND TECHNICIANS

**1. Professionals**

Professionals, as defined in Article X-08, may seek temporary entry under Section C of Annex X-03, except the following professionals:

(a) professionals in all health, education and social services sectors and related sectors, including:

- (i) managers in health/education/social & community services;
- (ii) physicians/dentists/optometrists/chiropractors/other health professions;
- (iii) pharmacists, dietitians & nutritionists;
- (iv) therapy & assessment professionals;
- (v) nurse supervisors & registered nurses;
- (vi) psychologists/social workers;
- (vii) university professors & assistants;
- (viii) college & other vocational instructors; and
- (ix) secondary/elementary school teachers & counsellors;

(b) professionals engaged in activities related to cultural industries as defined in Article X (Exceptions - Definitions) as well as:

- (i) managers in libraries, archives, museums and art galleries; and
- (ii) creative & performing artists;

(c) recreation, sports and fitness program and service directors;

(d) managers in telecommunication carriers;

(e) managers in postal and courier services;

(f) Managers in Manufacturing;

(g) Managers in Utilities;

(h) Managers in Construction and Transportation; and

(i) Judges, Lawyers and Notaries except foreign legal consultants.

**2. Technicians**

Technicians, as defined in Article X-08, who may seek temporary entry under Section D of Annex X-03 are only:

(a) civil engineering technologists and technicians;



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- (b) electrical and electronics engineering technologists and technicians<sup>42</sup>;
- (c) mechanical engineering technologists and technicians;
- (d) industrial engineering and manufacturing technologists and technicians;
- (e) construction inspectors and estimators;
- (f) engineering inspectors, testers and regulatory officers;
- (g) supervisors in the following fields: machining and related activities; printing and related activities; mining and quarrying; oil and gas drilling and service; mineral and metal processing; petroleum, gas and chemical processing and utilities; food, beverage and tobacco processing; plastic and rubber products manufacturing; forest products processing; and textile processing;
- (h) contractors and supervisors in the following fields: electrical trades and telecommunications; pipefitting trades; metal forming, shaping and erecting trades; carpentry trades; mechanic trades; heavy construction equipment crews; and other construction trades, installers, repairers and servicers;
- (i) electricians<sup>43</sup>;
- (j) plumbers;
- (k) industrial instrument technicians and mechanics;
- (l) aircraft instrument, electrical and avionics mechanics, technicians and inspectors;
- (m) underground production and development miners;
- (n) oil and gas well drillers, servicers and testers;
- (o) graphic designers and illustrators;
- (p) interior designers;
- (q) chefs;
- (r) computer and information system technicians; and
- (s) international selling and purchasing agents.

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<sup>42</sup> This includes electronic service technicians.

<sup>43</sup> This includes industrial electricians.

## Telecommunications

Canada's proposed text  
EU's proposed text

### Article X.1: Scope of Application

1. This Chapter applies to:
  - (a) measures adopted or maintained by a Party relating to access to and use of public telecommunications transport networks or services;
  - (b) measures adopted or maintained by a Party relating to obligations of suppliers of public telecommunications transport networks or services;
  - (c) other measures adopted or maintained by a Party relating to public telecommunications transport networks or services; and
  - (d) measures adopted or maintained by a Party relating to the supply of value-added services.

### ARTICLE 29: SCOPE AND DEFINITIONS

- 1.1. This Sub-section sets out principles of the regulatory framework for the following telecommunications services, other than broadcasting<sup>1</sup>, liberalised pursuant to Sections 2, 3 and 4 of this Chapter: voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, private leased circuit services and mobile and personal communications services and systems.

<sup>1</sup>. Broadcasting is defined as the uninterrupted chain of transmission required for the distribution of TV and radio programme signals to the general public, but does not cover contribution links between operators.]

2. This Chapter does not apply to any measure of a Party affecting the transmission by any means of telecommunications, including broadcast and cable distribution, of radio or television programming intended for reception by the public.
3. Nothing in this Chapter shall be construed to:
  - (a) require a Party to authorize a service supplier of the other Party to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services, other than as specifically provided in this Agreement; or

- (b) require a Party (or require a Party to compel any service supplier) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

#### Article X.2: Access to and Use of Public Telecommunications Transport Networks or Services

1. Subject to a Party's right to restrict the supply of a service in accordance with its Reservations in Annexes I and II, a Party shall ensure that enterprises of the other Party are accorded access to and use of public telecommunications transport networks or services on reasonable and non-discriminatory terms and conditions. This obligation shall be applied, *inter alia*, through paragraphs 2 through 6.

2. Each Party shall ensure that enterprises of the other Party have access to and use of any public telecommunications transport network or service offered within or across its borders, including private leased circuits, and to this end shall ensure, subject to paragraphs 5 and 6, that such enterprises are permitted to:

- (a) purchase or lease and attach terminal or other equipment which interfaces with the public telecommunications transport network;
- (b) connect private leased or owned circuits with public telecommunications transport networks and services of that Party or with circuits leased or owned by another enterprise;
- (c) use operating protocols of their choice; and
- (d) perform switching, signaling, and processing functions.

3. Each Party shall ensure that enterprises of the other Party may use public telecommunications transport networks and services for the movement of information in its territory or across its borders, including for intra-corporate communications of such enterprises, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of either Party.

4. Further to Article X (Exceptions - General Exceptions), and notwithstanding the paragraph 3, a Party may take such measures as are necessary to:

- (a) ensure the security and confidentiality of messages, or
- (b) to protect the privacy of users of public telecommunications transport services,

subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade.

5. Each Party shall ensure that no condition is imposed on access to and use of public telecommunications transport networks or services other than as necessary to:

- (a) safeguard the public service responsibilities of suppliers of public telecommunications transport networks or services, in particular their ability to make their networks or services available to the public generally;
- (b) protect the technical integrity of public telecommunications transport networks or services; or
- (c) ensure that enterprises of another Party do not supply services limited by the Party's Reservations in Annexes I and II.

6. Provided that they satisfy the criteria set out in paragraph 5, conditions for access to and use of public telecommunications transport networks or services may include:

- (a) restrictions on resale or shared use of such services;
- (b) a requirement to use specified technical interfaces, including interface protocols, for connection with such networks or services;
- (c) requirements, where necessary, for the inter-operability of such services;
- (d) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;
- (e) restrictions on connection of private leased or owned circuits with such networks or services or with circuits leased or owned by another enterprise; and
- (f) notification, registration and licensing.

**Article X.3: Procedures for Licenses and Other Authorizations**

Where a Party requires a supplier of public telecommunications transport networks or services to have a license, concession, permit, registration, certificate or other type of authorization the Party shall make the decision on the application for a license concession, permit, registration, certificate or other type of authorization within a reasonable period of time and, in the event that it denies the application, shall, upon request by the applicant, give the reasons for the denial.

*ARTICLE 31: AUTHORISATION TO PROVIDE TELECOMMUNICATIONS SERVICES*

1. Provision of services shall be authorised, wherever possible, upon simple notification.
2. A licence can be required to address issues of attributions of numbers and frequencies. The terms and conditions for such licences shall be made publicly available.
3. Where a licence is required:
  - (a) all the licensing criteria and a reasonable period of time normally required to reach a decision concerning an application for a licence shall be made publicly available;
  - (b) the reasons for the denial of a licence shall be made known in writing to the applicant upon request;
  - (c) the applicant for a licence shall be able to seek recourse before an appeal body in the case where a licence has been unduly denied;
  - (d) licence fees required by any Party for granting a licence shall not exceed the administrative costs normally incurred in the management, control and enforcement of the applicable licences<sup>2</sup>

<sup>2</sup>. Licensing fees do not include payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

**Article X.4: [Conduct of Major Suppliers]***Competitive Safeguards**ARTICLE 32: COMPETITIVE SAFEGUARDS ON MAJOR SUPPLIERS*

1. [Each Party shall maintain] [The Parties shall introduce or maintain] appropriate measures for the purpose of preventing -suppliers that, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.
2. [The] [These] anti-competitive practices [referred to in paragraph 1] shall include:
  - (a) engaging in anti-competitive cross-subsidization [or margin squeeze];
  - (b) using information obtained from competitors with anti-competitive results; and

- (c) not making available to other service suppliers, on a timely basis, technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

*Interconnection (part of Article X.4).*

#### ARTICLE 33: INTERCONNECTION

[1. Any supplier authorised to provide telecommunications services shall have the right to negotiate interconnection with other providers of publicly available telecommunications networks and services. Interconnection should in principle be agreed on the basis of commercial negotiation between the companies concerned.

2. Regulatory authorities shall ensure that suppliers that acquire information from another undertaking during the process of negotiating interconnection arrangements use that information solely for the purpose for which it was supplied and respect at all times the confidentiality of information transmitted or stored.]

3. [Subject to a right to restrict the supply of a service in accordance with its Reservations in Annexes I and II, each Party shall ensure that any major supplier in its territory provides interconnection:

- (a) at any technically feasible point in the network];

[Interconnection with a major supplier shall be ensured at any technically feasible point in the network. Such interconnection shall be provided:]

- (b) under non-discriminatory terms, conditions (including technical standards and specifications) and rates;

[formatting differences]

- (c) of a quality no less favourable than that provided for [its] [the] own like services [of such major supplier] or for like services of non-affiliated service suppliers or of its subsidiaries or other affiliates;

- (d) in a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that a supplier need not pay for network components or facilities that it does not require for the services to be supplied; and

- (e) upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities.

- 4. The procedures applicable for interconnection to a major supplier shall be made publicly available.

5. Major suppliers shall make publicly available either their interconnection agreements or their reference interconnection offers where it is appropriate.
6. A service supplier requesting interconnection with a major supplier shall have recourse, either at any time or after a reasonable period of time which has been made publicly known, to an independent domestic body, which may be a regulatory body as referred to in Article 31 of this Sub-Section, to resolve disputes regarding appropriate terms, conditions and rates for interconnection.

#### **Article X.5: Universal Service**

Each Party shall administer any universal service obligation that it adopts or maintains in a transparent, non-discriminatory, and competitively neutral manner and shall ensure that its universal service obligation is not more burdensome than necessary for the kind of universal service that it has defined.

#### **ARTICLE 35: UNIVERSAL SERVICE**

1. Each Party has the right to define the kind of universal service obligations it wishes to maintain.
2. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, objective and non-discriminatory way. The administration of such obligations shall also be neutral with respect to competition and be not more burdensome than necessary for the kind of universal service defined by the Party.
3. All suppliers should be eligible to ensure universal service. The designation shall be made through an efficient, transparent and non-discriminatory mechanism. Where necessary, Parties shall assess whether the provision of universal service represents an unfair burden on organisations(s) designated to provide universal service. Where justified on the basis of such calculation, and taking into account the market benefit if any which accrues to an organisation that offers universal service, national regulatory authorities shall determine whether a mechanism is required to compensate the supplier(s) concerned or to share the net cost of universal service obligations.
4. The Parties shall ensure that:
  - (a) directories of all subscribers are available to users in a form approved by the national regulatory authority, whether printed or electronic, or both, and are updated on a regular basis, and at least once a year;
  - (b) organisations that provide the services referred to in paragraphs (a) apply the principle of non-discrimination to the treatment of information that has been provided to them by other organisations.

#### **Article X.6: [Allocation and Use of] Scarce Resources**

#### **ARTICLE 34: SCARCE RESOURCES**

1. [Each Party shall administer its] [Any] procedures for the allocation and use of scarce [telecommunications] resources, including frequencies, numbers and rights of way, [shall be carried out] in an objective, timely, transparent and non-discriminatory manner.

The current state of allocated frequency bands shall be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

2. A Party's measures allocating and assigning spectrum and managing frequencies shall not be considered inconsistent with Article X (Cross-Border Trade in Services – Market Access), as it applies to either Chapter X (Investment) or Chapter X (Cross-Border Trade in Services). Accordingly, each Party retains the right to establish and apply its spectrum and frequency management policies that may limit the number of suppliers of public telecommunications transport services. Each Party also retains the right to allocate frequency bands taking into account present and future needs.

#### **Article X.7: Regulatory Body**

1. Each Party shall ensure that its regulatory body is separate from, and not accountable to, any supplier of public telecommunications transport networks or services and value-added services.
2. Each Party shall ensure that its regulatory body's decisions and procedures are impartial with respect to all market participants.

#### *ARTICLE 30: REGULATORY AUTHORITY*

1. Regulatory authorities for telecommunications services shall be legally distinct and functionally independent from any supplier of telecommunications services.
2. The regulatory authority shall be sufficiently empowered to regulate the sector. The tasks to be undertaken by a regulatory authority shall be made public in an easily accessible and clear form, in particular where those tasks are assigned to more than one body.
3. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.
4. A supplier affected by the decision of a regulatory authority shall have a right to appeal against that decision to an appeal body that is independent of the parties involved. Where the appeal body is not judicial in character, written reasons for its decision shall always be given and its decisions shall also be subject to review by an impartial and independent judicial authority. Decisions taken by appeal bodies shall be effectively enforced.

#### **Article X.8: Enforcement**

Each Party shall maintain appropriate procedures and authority to enforce the Party's domestic measures relating to the obligations set out in Articles X.2 and X.4. Such procedures shall include the ability to impose appropriate sanctions, which may include financial penalties, corrective orders or the modification, suspension or revocation of licences.

#### **Article X.9: Resolution of Domestic Telecommunication Disputes**



*Recourse to Regulatory Bodies*

1. Further to Article X (Transparency - Administrative Proceedings) and Article X (Transparency – Review and Appeal), each Party shall ensure the following:

- (a) suppliers of public telecommunications transport networks or services or value-added services of the other Party have timely recourse to its regulatory body to resolve disputes regarding the Party's measures that relate to matters covered in Articles X.2 and X.4 and that, under the domestic law of the Party, are within the regulatory body's jurisdiction;
- (b) suppliers of public telecommunications transport networks or services of the other Party requesting interconnection with a major supplier in the Party's territory have recourse to a regulatory body to resolve disputes regarding the appropriate terms, conditions and rates for interconnection with such a major supplier within a reasonable and publicly specified period of time.

**ARTICLE 38: DISPUTES BETWEEN SUPPLIERS**

- 1. In the event of a dispute arising between suppliers of telecommunications networks or services in connection with rights and obligations that arise from this Chapter, the national regulatory authority concerned shall, at the request of either party, issue a binding decision to resolve the dispute in the shortest possible timeframe and in any case within four months.
- 2. When such a dispute concerns the cross-border provision of services, the national regulatory authorities concerned shall co-ordinate their efforts in order to bring about a resolution of the dispute.

***Reconsideration<sup>1</sup>***

2. Each Party shall ensure that any supplier of public telecommunications transport networks or services or value-added services aggrieved by the determination or decision of a regulatory body may petition that body for reconsideration of that determination or decision.

<sup>1</sup>. With respect to Canada, Article X.9(2) shall not apply to any determination or decision related to the establishment and application of spectrum and frequency management policies.

**Article X.10: Transparency**

1. Further to Articles X (Transparency - Publication) and X (Transparency - Notification and Provision of Information), and in addition to the other provisions in this Chapter relating to the publication of information, each Party shall:

- (a) to the extent possible, ensure that interested persons are provided with adequate advance public notice of, and the opportunity to comment on, any regulation that its regulatory body proposes; and
- (b) make publicly available:

- (i) the current state of allocated frequency bands, but detailed identification of frequencies allocated for specific government use is not required;
- (ii) its measures relating to public telecommunications transport network or services and, where applicable, value-added services, including:
  - (A) regulations of its regulatory body and tariffs filed with its regulatory body, together with the basis for such regulations;
  - (B) relevant procedures of its regulatory body, including those related to interconnection and licensing;
  - (C) licensing criteria, the terms and conditions for licences, and the period of time normally required to reach a decision concerning an application for a licence;
  - (D) measures relating to tariffs and other terms and conditions of service;
  - (E) measures relating to specifications of technical interfaces;
  - (F) measures relating to conditions for attaching terminal or other equipment to the public telecommunications transport network;
  - (G) measures relating to notification, permit, registration, or licensing requirements, if any; and
- (iii) information on bodies responsible for preparing, amending and adopting standards-related measures.

2. Each Party shall ensure that interconnection agreements in force between major suppliers in its territory and other suppliers of public telecommunications networks and services in its territory are made publicly available.

#### **Article X.11: Forbearance**

The Parties recognize the importance of relying on market forces to achieve wide choices in the supply of telecommunications services. To this end, each Party may refrain from applying a regulation to a telecommunications service when:

- (a) enforcement of such regulation is not necessary to prevent unreasonable or discriminatory practices;
- (b) enforcement of such regulation is not necessary for the protection of consumers; or

- (c) it is consistent with the public interest, including promoting and enhancing competition between suppliers of public telecommunications transport networks or services.

#### Article X.12: Conditions for the Supply of Value-Added Services

1. No Party may require a supplier of value-added services to:

(a) supply those services to the public generally;

(b) cost justify its rates;

(c) file a tariff;

(d) connect its networks with any particular customer or network; or

(e) conform with any particular standard or technical regulation for connection other than for connection to a public telecommunications transport network.

2. Notwithstanding paragraph 1, a Party may take the actions described in subparagraphs (a) through (e) to remedy a practice of a supplier of value-added services that the Party has found in a particular case to be anti-competitive under its laws or regulations, or to otherwise promote competition or safeguard the interests of consumers.

#### Article X.13: Relation to Other Chapters

In the event of any inconsistency between this Chapter and another Chapter in this Agreement, this Chapter shall prevail to the extent of the inconsistency.

#### Article X.14: International Standards and Organizations

The Parties recognize the importance of international standards for global compatibility and interoperability of telecommunication networks or services and undertake to promote those standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

*ARTICLE 36: CROSS-BORDER PROVISION OF SERVICES*

The Parties shall not adopt or maintain any measure restricting the cross-border provision of telecommunications services.

*ARTICLE 37: CONFIDENTIALITY OF INFORMATION*

Each Party shall ensure the confidentiality of telecommunications and related traffic data by means of a public telecommunication network and publicly available telecommunications services without restricting trade in services

**Article X.15: Definitions**

**ARTICLE 29: SCOPE AND DEFINITIONS**

For the purpose of this [Chapter][Sub-section]:

**cost-oriented** means based on cost (including a reasonable profit), and may involve different cost methodologies for different facilities or services;

**enterprise** means an “enterprise” as defined in Article X (Initial Provisions and General Definitions – Definitions of General Application) and includes a branch of an enterprise;

**(c) essential [telecommunications] facilities** mean[s] facilities of a public telecommunications transport network [or][and] service that:

- (a) are exclusively or predominantly provided by a single or a limited number of suppliers; and
- (b) cannot feasibly be economically or technically substituted in order to [supply][provide] a service;

**(e) interconnection** means linking [with] suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier;

**intra-corporate communications** means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Party’s domestic laws and regulations, affiliates. For these purposes, “subsidiaries”, “branches” and, where applicable, “affiliates” are as defined by each Party. “Intra-corporate communications” excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates or that are offered to customers or potential customers;

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**leased circuits** means telecommunications facilities between two or more designated points that are set aside for the dedicated use of or availability to a particular customer or other users of the customer's choosing;

(d) a **major supplier** [‘ in the telecommunications sector is] [means] a supplier [that] [which] has the ability to materially affect the terms of participation [(] having regard to price and supply [)] in the relevant market for [public] telecommunications [transport networks or] services as a result of [:

(a) ] control over essential facilities [;] or [

(b) ] the use of its position in the market;

**network termination points** means the final demarcation of the public telecommunications transport network at the user's premises;

**non-discriminatory** means treatment no less favourable than that accorded to any other user of like public telecommunications transport networks or services in like circumstances;

**public telecommunications transport network** means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points;

**public telecommunications transport service** means any telecommunications transport service required, explicitly or in effect, by a Party to be offered to the public generally involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information. Such services may include, *inter alia*, telegraph, telephone, telex, and data transmission;

**regulatory body** means the body responsible for the regulation of telecommunications;

(b) a ‘regulatory authority’ in the telecommunications sector means the body or bodies charged with the regulation of telecommunications mentioned in this Chapter

**service supplier** means a person of a Party that seeks to supply or supplies a service, including a supplier of telecommunications networks or services;

**supply of a service** means the provision of a service:

(a) from the territory of a Party into the territory of the other Party;

(b) in the territory of a Party by a person of that Party to a person of the other Party;

(c) by a service supplier of a Party, through an enterprise in the territory of the other Party; or

(d) by a national of a Party in the territory of the other Party;

**telecommunications** means the transmission and reception of signals by any electromagnetic means;

(a) ‘telecommunications services’ means all services consisting of the transmission and reception of electro-magnetic signals and do not cover the economic activity consisting of the provision of content which requires telecommunications for its transport.

(f) ‘universal service’ means the set of services of specified quality that must be made available to all users in the territory of a Party regardless of their geographical location and at an affordable price; its scope and implementation are decided by each Party.

**user** means a subscriber for public telecommunications transport services or a service supplier; and

**value-added services** means those services that add value to public telecommunications transport services through enhanced functionality, by:

- (a) acting on the format, content, code, protocol or similar aspects of a customer’s transmitted information;
- (b) providing a customer with additional, different or restructured information; or
- (c) involving customer interaction with stored information.

## CHAPTER [X]

### ELECTRONIC COMMERCE

#### Article X-01: Objective, Scope and Coverage

1. The Parties recognise that electronic commerce increases economic growth and trade opportunities in many sectors and confirm the applicability of WTO rules to electronic commerce. They agree to promote the development of electronic commerce between

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them, in particular by co-operating on the issues raised by electronic commerce under the provisions of this [Chapter/Sub-section].

2. The Parties confirm that this Agreement applies to electronic commerce. In the event of an inconsistency between this [Chapter/Sub-section] and another [Chapter/Sub-section] of this Agreement, the other [Chapter/Sub-section] shall prevail to the extent of the inconsistency.
3. Nothing in this [Chapter/Sub-section] imposes obligations on a Party to allow [deliveries by electronic means]EU [products delivered electronically]CAN except in accordance with the obligations of that Party under the other [Chapter/Sub-section] of this Agreement.

### Article X-02: Customs Duties on Electronic Deliveries

1. The Parties agree that [deliveries by electronic means]EU [products delivered electronically]CAN [will]EU [shall]CAN not be subject to customs duties, fees or charges.
2. For greater clarity, paragraph 1 does not prevent a Party from imposing internal taxes or other internal charges on [electronic deliveries]EU [products delivered electronically]CAN, provided that such taxes or charges are imposed in a manner consistent with the other [Chapter/Sub-section] of this Agreement.

### [Article X-03: Transparency]

Pursuant to Article X (Transparency - Publication), each Party shall promptly publish or otherwise make publicly available its laws, regulations, procedures and administrative rulings of general application that pertain to electronic commerce. ]

**Comment [w3]:** Need for this article to be considered following agreement on horizontal transparency disciplines.

### [Article X-04: Paperless Customs]

1. Each Party shall endeavour to make [customs administration documents] available to the public in electronic form.
2. Each Party shall endeavour to accept [customs administration documents] submitted electronically as the legal equivalent of the paper version of such documents.]

**Comment [w4]:** Need for this article to be considered following examination of similar provision in trade facilitation chapter.

**Comment [w5]:** Terminology to be verified with Customs Procedures/Trade Facilitation lead

### [Article X-05: Data Protection]

The Parties agree that the development of electronic commerce must be fully compatible with the highest international standards of data protection, in order to ensure the confidence of users of electronic commerce.]EU

### [Article X-05: Trust and Confidence in Electronic Commerce]

1. The Parties recognize the importance of the protection of personal information and the protection of consumers from fraudulent and deceptive commercial practices in the sphere of electronic commerce. ]CAN

### [Article X-06: General Provisions]

Considering the potential of electronic commerce as a social and economic development tool, the Parties recognize the importance of:

- (a) clarity, transparency and predictability in their domestic regulatory frameworks in facilitating, to the maximum extent possible, the development of electronic commerce;
- (b) interoperability, innovation and competition in facilitating electronic commerce;
- (c) facilitating the use of electronic commerce by micro, small and medium sized enterprises.]CAN

**Article X-07: [Regulatory Aspects of E-Commerce]EU [Cooperation]CAN**

1. Recognising the global nature of electronic commerce, the Parties [shall]EU [agree to]CAN maintain a dialogue on [regulatory]EU issues [raised by]EU [in the sphere of]CAN electronic commerce, which will *inter alia* address [the following issues]EU :

- [the recognition of certificates of electronic signatures issued to the public and the facilitation of cross-border certification services,]EU
  - [the liability of intermediary service providers with respect to the transmission, or storage of information,]EU
  - the treatment of unsolicited electronic commercial communications,
  - the protection of personal information and [the protection of]CAN consumers from fraudulent and deceptive commercial practices [, and of intellectual property rights,]EU in the [ambit]EU [sphere]CAN of electronic commerce,
  - [any other issue relevant for the development of electronic commerce.]EU
2. The [co-operation]EU [dialogue]CAN in Paragraph 1 [can]EU [may]CAN take the form of exchange of information on the Parties' respective [legislation]EU [laws, regulations, and programs] CAN [on these issues]EU, as well as sharing experiences on the implementation of such [legislation]EU [laws, regulations, and programs] CAN.

[3. Recognizing the global nature of electronic commerce, the Parties affirm the importance of actively participating in multilateral fora to promote the development of electronic commerce.]CAN

**Article X-08: Definitions**

For purposes of this Chapter:



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**electronic commerce** means commerce conducted through [means of]EU telecommunications [, alone or in conjunction with other information and communication technologies]CAN [networks]EU ; and

[**telecommunications** means telecommunications as defined in the Telecommunications Chapter.] CAN

## EU TEXT

### CHAPTER XX

#### PAYMENTS AND CAPITAL MOVEMENTS

##### ARTICLE 8.1: CURRENT PAYMENTS

The Parties undertake to impose no restrictions and to allow all payments and transfers on the current account of balance of payments between residents of the Parties to be made in freely convertible currency and in accordance with the Articles of the Agreement of the International Monetary Fund.

##### ARTICLE 8.2: CAPITAL MOVEMENTS

1. With regard to transactions on the capital and financial account of balance of payments, the Parties undertake to impose no restrictions on the free movement of capital relating to direct investments made in accordance with the laws of the host country, to investments and other transactions liberalised in accordance with Chapter [7] (Trade in Services, Establishment and E-commerce) of this Agreement, and to the liquidation and repatriation of these invested capitals and of any profit generated therefrom.

2. Without prejudice to other provisions in this Agreement, the Community and its Member States, within the scope of their respective competences, and Canada recall their international commitments with regard to investment, and especially the OECD Codes of Liberalisation and OECD National Treatment Instrument.

3. Without prejudice to other provisions in this Agreement, the Parties shall not introduce any new restrictions on the movement of capital and current payments between residents of the Parties and shall not make the existing arrangements more restrictive.

4. The Parties may hold consultations with a view to further facilitating the movement of capital between them in order to promote the objectives of this Agreement.

### ARTICLE 8.3: SAFEGUARD MEASURES

1. Where, in exceptional circumstances, capital movements between the Parties cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy in Canada or one or more Member States, safeguard measures with regard to capital movements that are strictly necessary may be taken by the Party concerned<sup>44</sup> for a period not exceeding six months.

2. The [Trade Committee] shall be informed forthwith of the adoption of any safeguard measure and, as soon as possible, of a time schedule for its removal.

*[link with general and security exceptions]*

## Chapter [XX]

### Government Procurement

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<sup>44</sup> The Community or its Member States or Canada.

**Article I Definitions**

For purposes of this Chapter:

- (a) **commercial goods or services** means goods or services of a type generally sold or offered for sale in the commercial marketplace to, and customarily purchased by, non-governmental buyers for non-governmental purposes;
- (b) **Committee** means the Committee on Government Procurement established by Article XIX:1;
- (c) **construction service** means a service that has as its objective the realization by whatever means of civil or building works, [EU: in the sense of Division 51 of the United Nations Provisional Central Product Classification (CPC)];
- (d) **days** means calendar days;
- (e) **electronic auction** means an iterative process that involves the use of electronic means for the presentation by suppliers of either new prices, or new values for quantifiable non-price elements of the tender related to the evaluation criteria, or both, resulting in a ranking or re-ranking of tenders;
- (f) **in writing** or **written** means any worded or numbered expression that can be read, reproduced and later communicated. It may include electronically transmitted and stored information;
- (g) **limited tendering** means a procurement method whereby the procuring entity contacts a supplier or suppliers of its choice;
- (h) **measure** means any law, regulation, procedure, administrative guidance or practice, or any action of a procuring entity relating to a covered procurement;
- (i) **multi-use list** means a list of suppliers that a procuring entity has determined satisfy the conditions for participation in that list, and that the procuring entity intends to use more than once;
- (j) **notice of intended procurement** means a notice published by a procuring entity inviting interested suppliers to submit a request for participation, a tender, or both;
- (k) **offset** means any condition or undertaking that encourages local development or improves a Party's balance-of-payments accounts, such as the use of domestic content, the licensing of technology, investment, counter-trade and similar action or requirement;
- (l) **open tendering** means a procurement method whereby all interested suppliers may submit a tender;
- (m) **person** means a natural person or a juridical person;
- (n) **procuring entity** means an entity covered under Annex X-01, X-02 or X-03;

- (o) **qualified supplier** means a supplier that a procuring entity recognizes as having satisfied the conditions for participation;
- (p) **selective tendering** means a procurement method whereby only qualified suppliers are invited by the procuring entity to submit a tender;
- (q) **services** includes construction services, unless otherwise specified;
- (r) **standard** means a document approved by a recognized body that provides for common and repeated use, rules, guidelines or characteristics for goods or services, or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a good, service, process or production method;
- (s) **supplier** means a person or group of persons that provides or could provide goods or services; and
- (t) **technical specification** means a tendering requirement that:
  - (i) lays down the characteristics of goods or services to be procured, including quality, performance, safety and dimensions, or the processes and methods for their production or provision; or
  - (ii) addresses terminology, symbols, packaging, marking or labelling requirements, as they apply to a good or service.

## Article II Scope and Coverage

### *Application of Chapter*

1. This Chapter applies to any measure regarding covered procurement, whether or not it is conducted exclusively or partially by electronic means.

[EU: 2. The procurement subject to the rules of this chapter shall be all procurement covered by each Party's following Annexes and any note attached thereto:

- (a) in Annex X-01, the central government entities whose procurement is covered by this Chapter;
- (b) in Annex X-02, the sub-central government entities whose procurement is covered by this Chapter;
- (c) in Annex X-03, all other entities whose procurement is covered by this Chapter;
- (d) in Annex X-04, the goods covered by this Chapter [EU: content/scope of Annex to be further discussed during Round 2];

- (e) in Annex X-05, the services, other than construction services, covered by this Chapter;
- (f) in Annex X-06, the construction services covered by this Chapter; and
- (g) in Annex X-07, any General Notes.]

[EU: 3.] For the purposes of this Chapter, covered procurement means procurement for governmental purposes:

- (a) of goods, services, or any combination thereof:
  - (i) as specified in each Party's annexes to this Chapter; and
  - (ii) not procured with a view to commercial sale or resale, or for use in the production or supply of goods or services for commercial sale or resale;
- (b) by any contractual means, including: purchase; lease; and rental or hire purchase, with or without an option to buy;
- (c) for which the value, as estimated in accordance with paragraphs 6 through 8, equals or exceeds the relevant threshold specified in a Party's annexes to this Chapter, at the time of publication of a notice in accordance with Article VI;
- (d) by a procuring entity; and
- (e) that is not otherwise excluded from coverage in paragraph 3 or a Party's annexes to this Chapter.

3. Except where provided otherwise in a Party's annexes to this Chapter, this Chapter does not apply to:

- (a) the acquisition or rental of land, existing buildings or other immovable property or the rights thereon;
- (b) non-contractual agreements or any form of assistance that a Party provides, including cooperative agreements, grants, loans, equity infusions, guarantees and fiscal incentives;
- (c) the procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and government bonds, notes and other securities;
- (d) public employment contracts;
- (e) procurement conducted:
  - (i) for the specific purpose of providing international assistance, including development aid;

- (ii) under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory countries of a project; or
- (iii) under the particular procedure or condition of an international organization, or funded by international grants, loans or other assistance where the applicable procedure or condition would be inconsistent with this Chapter.

5. Where a procuring entity, in the context of covered procurement, requires persons not covered under a Party's annexes to this Chapter to procure in accordance with particular requirements, Article IV shall apply *mutatis mutandis* to such requirements.

#### Valuation

6. In estimating the value of a procurement for the purpose of ascertaining whether it is a covered procurement, a procuring entity shall:

- (a) neither divide a procurement into separate procurements nor select or use a particular valuation method for estimating the value of a procurement with the intention of totally or partially excluding it from the application of this Chapter; and
- (b) include the estimated maximum total value of the procurement over its entire duration, whether awarded to one or more suppliers, taking into account all forms of remuneration, including:
  - (i) premiums, fees, commissions and interest; and
  - (ii) where the procurement provides for the possibility of options, the total value of such options.

7. Where an individual requirement for a procurement results in the award of more than one contract, or in the award of contracts in separate parts (hereinafter referred to as "recurring [contracts]" [EU: revised GPA text is "recurring procurements"]), the calculation of the estimated maximum total value shall be based on:

- (a) the value of recurring [contracts] [EU: revised GPA text is "recurring procurements"] of the same type of good or service awarded during the preceding 12 months or the procuring entity's preceding fiscal year, adjusted, where possible, to take into account anticipated changes in the quantity or value of the good or service being procured over the following 12 months; or
- (b) the estimated value of recurring [contracts] [EU: revised GPA text is "recurring procurements"] of the same type of good or service to be awarded during the 12 months following the initial contract award or the procuring entity's fiscal year.

8. In the case of procurement by lease, rental or hire purchase of goods or services, or procurement for which a total price is not specified, the basis for valuation shall be:

- (a) in the case of a fixed-term contract:
  - (i) where the term of the contract is 12 months or less, the total estimated maximum value for its duration; or
  - (ii) where the term of the contract exceeds 12 months, the total estimated maximum value, including any estimated residual value;
- (b) where the contract is for an indefinite period, the estimated monthly instalment multiplied by 48; and
- (c) where it is not certain whether the contract is to be a fixed-term contract, subparagraph (b) shall be used.

### **Article III Security and General Exceptions**

1. Nothing in this Chapter shall be construed to prevent a Party from taking any action or not disclosing any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

2. Subject to the requirement that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Parties where the same conditions prevail or a disguised restriction on international trade, nothing in this Chapter shall be construed to prevent a Party from imposing or enforcing measures:

- (a) necessary to protect public morals, order or safety;
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to protect intellectual property; or
- (d) relating to goods or services of persons with disabilities, philanthropic institutions or prison labour.

### **Article IV General Principles**

#### *Non-Discrimination*

1. With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of the other Party and to the suppliers of the other Party offering such goods or services, treatment no less favourable than the treatment the Party, including its procuring entities, accords to [EU: its own] [CAN: domestic] goods, services and [EU: locally established] suppliers.

2. With respect to any measure regarding covered procurement, a Party, including its procuring entities, shall not:

- (a) treat a locally established supplier less favourably than another locally established supplier on the basis of the degree of foreign affiliation or ownership; or
- (b) discriminate against a locally established supplier on the basis that the goods or services offered by that supplier for a particular procurement are goods or services of the other Party.

#### *Use of Electronic Means*

3. When conducting covered procurement by electronic means, a procuring entity shall:
- (a) ensure that the procurement is conducted using information technology systems and software, including those related to authentication and encryption of information, that are generally available and interoperable with other generally available information technology systems and software; and
  - (b) maintain mechanisms that ensure the integrity of requests for participation and tenders, including establishment of the time of receipt and the prevention of inappropriate access.

#### *Conduct of Procurement*

4. A procuring entity shall conduct covered procurement in a transparent and impartial manner that:
- (a) is consistent with this Chapter, using methods such as open tendering, selective tendering and limited tendering;
  - (b) avoids conflicts of interest; and
  - (c) prevents corrupt practices.

#### *Rules of Origin*

5. For purposes of covered procurement, a Party shall not apply rules of origin to goods or services imported from or supplied from the other Party that are different from the rules of origin the Party applies at the same time in the normal course of trade to imports or supplies of the same goods or services from the same Party.

#### *Offsets*

6. With regard to covered procurement, a Party, including its procuring entities, shall not seek, take account of, impose or enforce any offset.



*Measures Not Specific to Procurement*

7. Paragraphs 1 and 2 shall not apply to: customs duties and charges of any kind imposed on, or in connection with, importation; the method of levying such duties and charges; other import regulations or formalities and measures affecting trade in services other than measures governing covered procurement.

**Article V Information on the Procurement System**

1. Each Party shall:

- (a) promptly publish any law, regulation, judicial decision, administrative ruling of general application, standard contract clause mandated by law or regulation and incorporated by reference in notices or tender documentation and procedure regarding covered procurement, and any modifications thereof, in an officially designated electronic or paper medium that is widely disseminated and remains readily accessible to the public; and
- (b) provide an explanation thereof to the other Party, on request.

2. Each Party shall list, in **[Annex X-Information on the Procurement System]X**:

- (a) the electronic or paper media in which the Party publishes the information described in paragraph 1;
- (b) the electronic or paper media in which the Party publishes the notices required by Articles VI, VIII:7 and XV:2; and
- (c) the website address or addresses where the Party publishes:
  - (i) its procurement statistics pursuant to Article XV:5; or
  - (ii) its notices concerning awarded contracts pursuant to Article XV:6.

3. Each Party shall promptly notify the Committee of any modification to the Party's information listed in **[Annex X-Information on the Procurement System]X**.

**Article VI Notices***Notice of Intended Procurement*

1. For each covered procurement, a procuring entity shall publish a notice of intended procurement in the appropriate paper or electronic medium listed in **[Annex X-Information on the Procurement System]X**, except in the circumstances described in Article XII. Such medium shall be widely disseminated and such notices shall remain readily accessible to the public, at least until expiration of the time-period indicated in the notice.

[EU: For all covered procurement, the notices shall, at least, be accessible by electronic means free of charge through a single point of access. This electronic gateway site shall be listed by each Party in **[Annex X-X]**.

2. Except as otherwise provided in this Chapter, each notice of intended procurement shall include:

- (a) the name and address of the procuring entity and other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, and their cost and terms of payment, if any;
- (b) a description of the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity;
- (c) for recurring contracts, an estimate, if possible, of the timing of subsequent notices of intended procurement;
- (d) a description of any options;
- (e) the time-frame for delivery of goods or services or the duration of the contract;
- (f) the procurement method that will be used and whether it will involve negotiation or electronic auction;
- (g) where applicable, the address and any final date for the submission of requests for participation in the procurement;
- (h) the address and the final date for the submission of tenders;
- (i) the language or languages in which tenders or requests for participation may be submitted, if they may be submitted in a language other than an official language of the Party of the procuring entity;
- (j) a list and brief description of any conditions for participation of suppliers, including any requirements for specific documents or certifications to be provided by suppliers in connection therewith, unless such requirements are included in tender documentation that is made available to all interested suppliers at the same time as the notice of intended procurement;
- (k) where, pursuant to Article VIII, a procuring entity intends to select a limited number of qualified suppliers to be invited to tender, the criteria that will be used to select them and, where applicable, any limitation on the number of suppliers that will be permitted to tender; and
- (l) an indication that the procurement is covered by this Chapter.

#### *Summary Notice*

3. For each case of intended procurement, a procuring entity shall publish a summary notice that is readily accessible, at the same time as the publication of the notice of intended procurement, in English or French. The summary notice shall contain at least the following information:

- (a) the subject-matter of the procurement;
- (b) the final date for the submission of tenders or, where applicable, any final date for the submission of requests for participation in the procurement or for inclusion on a multi-use list; and
- (c) the address from which documents relating to the procurement may be requested.

#### *Notice of Planned Procurement*

4. Procuring entities are encouraged to publish in the appropriate paper or electronic medium listed in [Annex X-~~Information on the Procurement System~~ X] as early as possible in each fiscal year a notice regarding their future procurement plans (hereinafter referred to as "notice of planned procurement"). [EU: The notice of planned procurement shall also be published in the single electronic gateway site listed in Annex X-X] The notice of planned procurement should include the subject-matter of the procurement and the planned date of the publication of the notice of intended procurement.

5. A procuring entity covered under Annex X-02 or 3 may use a notice of planned procurement as a notice of intended procurement provided that the notice of planned procurement includes as much of the information referred to in paragraph 2 as is available to the entity and a statement that interested suppliers should express their interest in the procurement to the procuring entity.

#### **Article VII Conditions for Participation**

1. A procuring entity shall limit any conditions for participation in a procurement to those that are essential to ensure that a supplier has the legal and financial capacities and the commercial and technical abilities to undertake the relevant procurement.

2. In establishing the conditions for participation, a procuring entity:

shall not impose the condition that, in order for a supplier to participate in a procurement [EU: or be awarded a contract], the supplier has previously been awarded one or more contracts by a procuring entity of [EU: the other] Party [EU: or that the supplier has prior experience in the territory of the Party, except when such prior experience is essential to meet the requirements of the procurement].

3. In assessing whether a supplier satisfies the conditions for participation, a procuring entity:

- (a) shall evaluate the financial capacity and the commercial and technical abilities of a supplier on the basis of that supplier's business activities both inside and outside the territory of the Party of the procuring entity; and
- (b) shall base its evaluation on the conditions that the procuring entity has specified in advance in notices or tender documentation.

4. Where there is supporting evidence, a Party, including its procuring entities, may exclude a supplier on grounds such as:

- (a) bankruptcy;
- (b) false declarations;
- (c) significant or persistent deficiencies in performance of any substantive requirement or obligation under a prior contract or contracts;
- (d) final judgments in respect of serious crimes or other serious offences;
- (e) professional misconduct or acts or omissions that adversely reflect on the commercial integrity of the supplier; or
- (f) failure to pay taxes.

#### **Article VIII Qualification of Suppliers**

##### *Registration Systems and Qualification Procedures*

1. A Party, including its procuring entities, may maintain a supplier registration system under which interested suppliers are required to register and provide certain information.

2. Each Party shall ensure that:

- (a) its procuring entities make efforts to minimize differences in their qualification procedures; and
- (b) where its procuring entities maintain registration systems, the entities make efforts to minimize differences in their registration systems.

3. A Party, including its procuring entities, shall not adopt or apply any registration system or qualification procedure with the purpose or the effect of creating unnecessary obstacles to the participation of suppliers of the other Party in its procurement.

##### *Selective Tendering*

4. Where a procuring entity intends to use selective tendering, the entity shall:

- (a) include in the notice of intended procurement at least the information specified in Article VI:2(a), (b), (f), (g), (j), (k) and (l) and invite suppliers to submit a request for participation; and
- (b) provide, by the commencement of the time-period for tendering, at least the information in Article VI:2 (c), (d), (e), (h) and (i) to the qualified suppliers that it notifies as specified in Article X:3(b).

5. A procuring entity shall allow all qualified suppliers to participate in a particular procurement, unless the procuring entity states in the notice of intended procurement any

limitation on the number of suppliers that will be permitted to tender and the criteria for selecting the limited number of suppliers.

6. Where the tender documentation is not made publicly available from the date of publication of the notice referred to in paragraph 4, a procuring entity shall ensure that those documents are made available at the same time to all the qualified suppliers selected in accordance with paragraph 5.

#### *Multi-Use Lists*

7. A procuring entity may maintain a multi-use list of suppliers, provided that a notice inviting interested suppliers to apply for inclusion on the list is:

- (a) published annually; and
- (b) where published by electronic means, made available continuously,

in the appropriate medium listed in [Annex X-~~Information on the Procurement System~~].

8. The notice provided for in paragraph 7 shall include:

- (a) a description of the goods or services, or categories thereof, for which the list may be used;
- (b) the conditions for participation to be satisfied by suppliers for inclusion on the list and the methods that the procuring entity will use to verify that a supplier satisfies the conditions;
- (c) the name and address of the procuring entity and other information necessary to contact the entity and obtain all relevant documents relating to the list;
- (d) the period of validity of the list and the means for its renewal or termination, or where the period of validity is not provided, an indication of the method by which notice will be given of the termination of use of the list; and
- (e) an indication that the list may be used for procurement covered by this

Chapter.

9. Notwithstanding paragraph 7, where a multi-use list will be valid for three years or less, a procuring entity may publish the notice referred to in paragraph 7 only once, at the beginning of the period of validity of the list, provided that the notice:

- (a) states the period of validity and that further notices will not be published; and
- (b) is published by electronic means and is made available continuously during the period of its validity.

10. A procuring entity shall allow suppliers to apply at any time for inclusion on a multi-use list and shall include on the list all qualified suppliers within a reasonably short time.

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11. Where a supplier that is not included on a multi-use list submits a request for participation in a procurement based on a multi-use list and all required documents, within the time-period provided for in Article X:2, a procuring entity shall examine the request. The procuring entity shall not exclude the supplier from consideration in respect of the procurement on the grounds that the entity has insufficient time to examine the request, unless, in exceptional cases, due to the complexity of the procurement, the entity is not able to complete the examination of the request within the time-period allowed for the submission of tenders.

*[CAN: Annex X-02 and] Annex X-03 Entities*

*[EU: in order to clarify, the proposal by the EU is to delete the reference to Annex 2 entities]*

12. A procuring entity covered under Annex *[CAN: X-02 or] [EU: in order to clarify, the proposal by the EU is to delete the reference to Annex 2 entities]* X-03 may use a notice inviting suppliers to apply for inclusion on a multi-use list as a notice of intended procurement, provided that:

- (a) the notice is published in accordance with paragraph 7 and includes the information required under paragraph 8, as much of the information required under Article VI:2 as is available and a statement that it constitutes a notice of intended procurement or that only the suppliers on the multi-use list will receive further notices of procurement covered by the multi-use list; and
- (b) the entity promptly provides to suppliers that have expressed an interest in a given procurement to the entity, sufficient information to permit them to assess their interest in the procurement, including all remaining information required in Article VI:2, to the extent such information is available.

13. A procuring entity covered under Annex *[CAN: X-02] [EU: in order to clarify, the proposal by the EU is to delete the reference to Annex 2 entities]* or X-03 may allow a supplier that has applied for inclusion on a multi-use list in accordance with paragraph 10 to tender in a given procurement, where there is sufficient time for the procuring entity to examine whether the supplier satisfies the conditions for participation.

### *Information on Procuring Entity Decisions*

14. A procuring entity shall promptly inform any supplier that submits a request for participation in a procurement or application for inclusion on a multi-use list of the procuring entity's decision with respect to the request or application.

15. Where a procuring entity rejects a supplier's request for participation in a procurement or application for inclusion on a multi-use list, ceases to recognize a supplier as qualified, or removes a supplier from a multi-use list, the entity shall promptly inform the supplier and, on request of the supplier, promptly provide the supplier with a written explanation of the reasons for its decision.

**Article IX Technical Specifications and Tender Documentation***Technical Specifications*

1. A procuring entity shall not prepare, adopt or apply any technical specification or prescribe any conformity assessment procedure with the purpose or the effect of creating unnecessary obstacles to international trade.

[EU: The technical specifications must allow equal access of suppliers and must not have the effect of creating unjustified obstacles to the opening of procurement markets to competition.]

2. In prescribing the technical specifications for the goods or services being procured, a procuring entity shall, where appropriate:

- (a) set out the technical specification in terms of performance and functional requirements, rather than design or descriptive characteristics; and
- (b) base the technical specification on international standards, where such exist; otherwise, on national technical regulations, recognized national standards or building codes.

3. Where design or descriptive characteristics are used in the technical specifications, a procuring entity should indicate, where appropriate, that it will consider tenders of equivalent goods or services that demonstrably fulfil the requirements of the procurement by including words such as "or equivalent" in the tender documentation.

4. A procuring entity shall not prescribe technical specifications that require or refer to a particular trademark or trade name, patent, copyright, design, type, specific origin, producer or supplier, unless there is no other sufficiently precise or intelligible way of describing the procurement requirements and provided that, in such cases, the entity includes words such as "or equivalent" in the tender documentation.

~~5. A procuring entity shall not seek or accept, in a manner that would have the effect of precluding competition, advice that may be used in the preparation or adoption of any technical specification for a specific procurement from a person that may have a commercial interest in the procurement.~~

6. For greater certainty, a Party, including its procuring entities, may, in accordance with this Article, prepare, adopt or apply technical specifications to promote the conservation of natural resources or protect the environment.

*Tender Documentation*

7. A procuring entity shall make available to suppliers tender documentation that includes all information necessary to permit suppliers to prepare and submit responsive tenders. Unless already provided in the notice of intended procurement, such documentation shall include a complete description of:

- (a) the procurement, including the nature and the quantity of the goods or services to be procured or, where the quantity is not known, the estimated quantity and any requirements to be fulfilled, including any technical specifications, conformity assessment certification, plans, drawings or instructional materials;

- (b) any conditions for participation of suppliers, including a list of information and documents that suppliers are required to submit in connection with the conditions for participation;
- (c) all evaluation criteria the entity will apply in the awarding of the contract, and, except where price is the sole criterion, the relative importance of such criteria;
- (d) where the procuring entity will conduct the procurement by electronic means, any authentication and encryption requirements or other requirements related to the submission of information by electronic means;
- (e) where the procuring entity will hold an electronic auction, the rules, including identification of the elements of the tender related to the evaluation criteria, on which the auction will be conducted;
- (f) where there will be a public opening of tenders, the date, time and place for the opening and, where appropriate, the persons authorized to be present;
- (g) any other terms or conditions, including terms of payment and any limitation on the means by which tenders may be submitted, such as whether on paper or by electronic means; and
- (h) any dates for the delivery of goods or the supply of services.

8. In establishing any date for the delivery of goods or the supply of services being procured, a procuring entity shall take into account such factors as the complexity of the procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services.

9. The evaluation criteria set out in the notice of intended procurement or tender documentation may include, among others, price and other cost factors, quality, technical merit, environmental characteristics and terms of delivery.

10. A procuring entity shall promptly:

- (a) make available tender documentation to ensure that interested suppliers have sufficient time to submit responsive tenders;
- (b) provide, on request, the tender documentation to any interested supplier; and
- (c) reply to any reasonable request for relevant information by any interested or participating supplier, provided that such information does not give that supplier an advantage over other suppliers.



*Modifications*

11. Where, prior to the award of a contract, a procuring entity modifies the criteria or requirements set out in the notice of intended procurement or tender documentation provided to participating suppliers, or amends or reissues a notice or tender documentation, it shall transmit in writing all such modifications or amended or re-issued notice or tender documentation:

- (a) to all suppliers that are participating at the time of the modification, amendment or re-issuance, where such suppliers are known to the entity, and in all other cases, in the same manner as the original information was made available; and
- (b) in adequate time to allow such suppliers to modify and re-submit amended tenders, as appropriate.

**Article X Time-Periods***General*

1. A procuring entity shall, consistent with its own reasonable needs, provide sufficient time for suppliers to prepare and submit requests for participation and responsive tenders, taking into account such factors as:

- (a) the nature and complexity of the procurement;
- (b) the extent of subcontracting anticipated; and
- (c) the time necessary for transmitting tenders by non-electronic means from foreign as well as domestic points where electronic means are not used.

Such time-periods, including any extension of the time-periods, shall be the same for all interested or participating suppliers.

*Deadlines*

2. A procuring entity that uses selective tendering shall establish that the final date for the submission of requests for participation shall not, in principle, be less than 25 days from the date of publication of the notice of intended procurement. Where a state of urgency duly substantiated by the procuring entity renders this time-period impracticable, the time-period may be reduced to not less than 10 days.

3. Except as provided for in paragraphs 4, 5, 7 and 8 a procuring entity shall establish that the final date for the submission of tenders shall not be less than 40 days from the date on which:

- (a) in the case of open tendering, the notice of intended procurement is published; or
- (b) in the case of selective tendering, the entity notifies suppliers that they will be invited to submit tenders, whether or not it uses a multi-use list.

4. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 3 to not less than 10 days where:

- (a) the procuring entity has published a notice of planned procurement as described in Article VI:4 at least 40 days and not more than 12 months in advance of the publication of the notice of intended procurement, and the notice of planned procurement contains:
  - (i) a description of the procurement;
  - (ii) the approximate final dates for the submission of tenders or requests for participation;
  - (iii) a statement that interested suppliers should express their interest in the procurement to the procuring entity;
  - (iv) the address from which documents relating to the procurement may be obtained; and
  - (v) as much of the information that is required for the notice of intended procurement under Article VI:2, as is available;
- (b) the procuring entity, for procurements of a recurring nature, indicates in an initial notice of intended procurement that subsequent notices will provide time-periods for tendering based on this paragraph; or
- (c) a state of urgency duly substantiated by the procuring entity renders the time-period for tendering established in accordance with paragraph 3 impracticable.

5. A procuring entity may reduce the time-period for tendering established in accordance with paragraph 3 by five days for each one of the following circumstances:

- (a) the notice of intended procurement is published by electronic means;
- (b) all the tender documentation is made available by electronic means from the date of the publication of the notice of intended procurement; and
- (c) the entity accepts tenders by electronic means.

6. The use of paragraph 5, in conjunction with paragraph 4, shall in no case result in the reduction of the time-period for tendering established in accordance with paragraph 3 to less than 10 days from the date on which the notice of intended procurement is published.

7. Notwithstanding any other provision in this Article, where a procuring entity purchases commercial goods or services, or any combination thereof, it may reduce the time-period for tendering established in accordance with paragraph 3 to not less than 13 days, provided that it publishes by electronic means, at the same time, both the notice of intended procurement and the tender documentation. In addition, where the entity accepts tenders for commercial goods or services by electronic means, it may reduce the time-period established in accordance with paragraph 3 to not less than 10 days.

8. Where a procuring entity covered under Annex X-02 or X-03 has selected all or a limited number of qualified suppliers, the time-period for tendering may be fixed by mutual agreement between the procuring entity and the selected suppliers. In the absence of agreement, the period shall not be less than 10 days.

#### **Article XI Negotiation**

1. A Party may provide for its procuring entities to conduct negotiations:
  - (a) where the entity has indicated its intent to conduct negotiations in the notice of intended procurement required under Article VI:2; or
  - (b) where it appears from the evaluation that no tender is obviously the most advantageous in terms of the specific evaluation criteria set out in the notice of intended procurement or tender documentation.
2. A procuring entity shall:
  - (a) ensure that any elimination of suppliers participating in negotiations is carried out in accordance with the evaluation criteria set out in the notice of intended procurement or tender documentation; and
  - (b) where negotiations are concluded, provide a common deadline for the remaining participating suppliers to submit any new or revised tenders.

#### **Article XII Limited Tendering**

1. Provided that it does not use this provision for the purpose of avoiding competition among suppliers or in a manner that discriminates against suppliers of the other Party or protects domestic suppliers, a procuring entity may use limited tendering and may choose not to apply Articles VI through VIII, IX (paragraphs 7 through 11), X, XI, XIII and XIV only under any of the following circumstances:

- (a) where:
  - (i) no tenders were submitted or no suppliers requested participation;
  - (ii) no tenders that conform to the essential requirements of the tender documentation were submitted;
  - (iii) no suppliers satisfied the conditions for participation; or
  - (iv) the tenders submitted have been collusive,provided that the requirements of the tender documentation are not substantially modified;
- (b) where the goods or services can be supplied only by a particular supplier and no reasonable alternative or substitute goods or services exist for any of the following reasons:

- (i) the requirement is for a work of art;
- (ii) the protection of patents, copyrights or other exclusive rights; or
- (iii) due to an absence of competition for technical reasons;
- (c) for additional deliveries by the original supplier of goods or services that were not included in the initial procurement where a change of supplier for such additional goods or services:
  - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, software, services or installations procured under the initial procurement; and
  - (ii) would cause significant inconvenience or substantial duplication of costs for the procuring entity;
- (d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the procuring entity, the goods or services could not be obtained in time using open tendering or selective tendering;
- (e) for goods purchased on a commodity market;
- (f) where a procuring entity procures a prototype or a first good or service that is developed at its request in the course of, and for, a particular contract for research, experiment, study or original development. Original development of a first good or service may include limited production or supply in order to incorporate the results of field testing and to demonstrate that the good or service is suitable for production or supply in quantity to acceptable quality standards, but does not include quantity production or supply to establish commercial viability or to recover research and development costs;
- (g) for purchases made under exceptionally advantageous conditions that only arise in the very short term in the case of unusual disposals such as those arising from liquidation, receivership or bankruptcy, but not for routine purchases from regular suppliers; or
- (h) where a contract is awarded to a winner of a design contest provided that:
  - (i) the contest has been organized in a manner that is consistent with the principles of this Chapter, in particular relating to the publication of a notice of intended procurement; and
  - (ii) the participants are judged by an independent jury with a view to a design contract being awarded to a winner.

[CAN: (i) where a procuring entity needs to procure consulting services regarding matters of a confidential nature, the disclosure of which could reasonably be expected

to compromise government confidences, cause economic disruption or similarly be contrary to the public interest.]

2. A procuring entity shall prepare a report in writing on each contract awarded under paragraph 1. The report shall include the name of the procuring entity, the value and kind of goods or services procured and a statement indicating the circumstances and conditions described in paragraph 1 that justified the use of limited tendering.

### **Article XIII Electronic Auctions**

Where a procuring entity intends to conduct a covered procurement using an electronic auction, the entity shall provide each participant, before commencing the electronic auction, with:

- (a) the automatic evaluation method, including the mathematical formula, that is based on the evaluation criteria set out in the tender documentation and that will be used in the automatic ranking or re-ranking during the auction;
- (b) the results of any initial evaluation of the elements of its tender where the contract is to be awarded on the basis of the most advantageous tender; and
- (c) any other relevant information relating to the conduct of the auction.

### **Article XIV Treatment of Tenders and Awarding of Contracts**

#### *Treatment of Tenders*

1. A procuring entity shall receive, open and treat all tenders under procedures that guarantee the fairness and impartiality of the procurement process, and the confidentiality of tenders.
2. A procuring entity shall not penalize any supplier whose tender is received after the time specified for receiving tenders if the delay is due solely to mishandling on the part of the procuring entity.
3. Where a procuring entity provides a supplier with an opportunity to correct unintentional errors of form between the opening of tenders and the awarding of the contract, the procuring entity shall provide the same opportunity to all participating suppliers.

#### *Awarding of Contracts*

4. To be considered for an award, a tender shall be submitted in writing and shall, at the time of opening, comply with the essential requirements set out in the notices and tender documentation and be from a supplier that satisfies the conditions for participation.
5. Unless a procuring entity determines that it is not in the public interest to award a contract, the entity shall award the contract to the supplier that the entity has determined to be capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notices and tender documentation, has submitted:

- (a) the most advantageous tender; or

- (b) where price is the sole criterion, the lowest price.

~~6. Where a procuring entity receives a tender with a price that is abnormally lower than the prices in other tenders submitted, it may verify with the supplier that it satisfies the conditions for participation and is capable of fulfilling the terms of the contract.~~

7. A procuring entity shall not use options, cancel a procurement or modify awarded contracts in a manner that circumvents the obligations under this Chapter.

## **Article XV Transparency of Procurement Information**

### *Information Provided to Suppliers*

1. A procuring entity shall promptly inform participating suppliers of the entity's contract award decisions and, on the request of a supplier, shall do so in writing. Subject to paragraphs 2 and 3 of Article XVI, a procuring entity shall, on request, provide an unsuccessful supplier with an explanation of the reasons why the entity did not select its tender and the relative advantages of the successful supplier's tender.

### *Publication of Award Information*

2. Not later than 72 days after the award of each contract covered by this Chapter, a procuring entity shall publish a notice in the appropriate paper or electronic medium listed in [Annex X-**Information on the Procurement System**]~~X~~. Where the entity publishes the notice only in an electronic medium, the information shall remain readily accessible for a reasonable period of time. The notice shall include at least the following information:

- (a) a description of the goods or services procured;
- (b) the name and address of the procuring entity;
- (c) the name and address of the successful supplier;
- (d) the value of the successful tender or the highest and lowest offers taken into account in the award of the contract;
- (e) the date of award; and
- (f) the type of procurement method used, and in cases where limited tendering was used in accordance with Article XII, a description of the circumstances justifying the use of limited tendering.

### *Maintenance of Documentation, Reports and Electronic Traceability*

3. Each procuring entity shall, for a period of at least three years from the date it awards a contract, maintain:

- (a) the documentation and reports of tendering procedures and contract awards relating to covered procurement, including the reports required under Article XII; and

- (b) data that ensure the appropriate traceability of the conduct of covered procurement by electronic means.

*Collection and Reporting of Statistics*

[CAN: 4. Each Party shall collect and report to the Committee statistics on its contracts covered by this Chapter. Each report shall cover one year and be submitted within two years of the end of the reporting period, and shall contain:

- (a) for Annex X-01 procuring entities:
  - (i) the number and total value, for all such entities, of all contracts covered by this Chapter;
  - (ii) the number and total value of all contracts covered by this Chapter awarded by each such entity, broken down by categories of goods and services according to an internationally recognized uniform classification system; and
  - (iii) the number and total value of all contracts covered by this Chapter awarded by each such entity under limited tendering;
- (b) for Annex X-02 and X-03 procuring entities, the number and total value of contracts covered by this Chapter awarded by all such entities, broken down by Annex; and
- (c) estimates for the data required under subparagraphs (a) and (b), with an explanation of the methodology used to develop the estimates, where it is not feasible to provide the data.

5. Where a Party publishes its statistics on an official website, in a manner that is consistent with the requirements of paragraph 4, the Party may substitute a notification to the Committee of the website address for the submission of the data under paragraph 4, with any instructions necessary to access and use such statistics.

6. Where a Party requires notices concerning awarded contracts, pursuant to paragraph 2, to be published electronically and where such notices are accessible to the public through a single database in a form permitting analysis of the covered contracts, the Party may substitute a notification to the Committee of the website address for the submission of the data under paragraph 4, with any instructions necessary to access and use such data.]

[EU: Each Party agrees to communicate to the other Party the available and comparable statistical data relevant to the procurement covered by this Chapter. The modalities of the reporting will be addressed by the Committee under Article XIX.]

**Article XVI Disclosure of Information***Provision of Information to Parties*

1. On request of the other Party, a Party shall provide promptly any information necessary to determine whether a procurement was conducted fairly, impartially and in accordance with this Chapter, including information on the characteristics and relative advantages of the successful tender. In cases where release of the information would prejudice competition in future tenders, the Party that receives the information shall not disclose it to any supplier, except after consulting with, and obtaining the agreement of, the Party that provided the information.

*Non-Disclosure of Information*

2. Notwithstanding any other provision of this Chapter, a Party, including its procuring entities, shall not provide to any particular supplier information that might prejudice fair competition between suppliers.

3. Nothing in this Chapter shall be construed to require a Party, including its procuring entities, authorities and review bodies, to disclose confidential information where disclosure:

- (a) would impede law enforcement;
- (b) might prejudice fair competition between suppliers;
- (c) would prejudice the legitimate commercial interests of particular persons, including the protection of intellectual property; or
- (d) would otherwise be contrary to the public interest.

**Article XVII Domestic Review Procedures**

1. [EU: Each Party shall ensure that its procuring entities listed in the annexes to this Chapter comply with the provisions of this Chapter in conducting covered procurements]

2. Each Party shall provide a timely, effective, transparent and non-discriminatory administrative or judicial review procedure through which a supplier may challenge:

- (a) a breach of the Chapter; or
- (b) where the supplier does not have a right to challenge directly a breach of the Chapter under the domestic law of a Party, a failure to comply with a Party's measures implementing this Chapter,

arising in the context of a covered procurement, in which the supplier has, or has had, an interest. The procedural rules for all challenges shall be in writing and made generally available.

2. In the event of a complaint by a supplier, arising in the context of covered procurement in which the supplier has, or has had, an interest, that there has been a breach or a failure as referred to in paragraph 1, the Party of the procuring entity conducting the



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procurement shall encourage the entity and the supplier to seek resolution of the complaint through consultations. The entity shall accord impartial and timely consideration to any such complaint in a manner that is not prejudicial to the supplier's participation in ongoing or future procurement or its right to seek corrective measures under the administrative or judicial review procedure.

3. Each supplier shall be allowed a sufficient period of time to prepare and submit a challenge, which in no case shall be less than 10 days from the time when the basis of the challenge became known or reasonably should have become known to the supplier.

4. Each Party shall establish or designate at least one impartial administrative or judicial authority that is independent of its procuring entities to receive and review a challenge by a supplier arising in the context of a covered procurement.

5. Where a body other than an authority referred to in paragraph 4 initially reviews a challenge, the Party shall ensure that the supplier may appeal the initial decision to an impartial administrative or judicial authority that is independent of the procuring entity whose procurement is the subject of the challenge.

6. Each Party shall ensure that a review body that is not a court shall have its decision subject to judicial review or have procedures that provide that:

- (a) the procuring entity shall respond in writing to the challenge and disclose all relevant documents to the review body;
- (b) the participants to the proceedings (hereinafter referred to as "participants") shall have the right to be heard prior to a decision of the review body being made on the challenge;
- (c) the participants shall have the right to be represented and accompanied;
- (d) the participants shall have access to all proceedings;
- (e) the participants shall have the right to request that the proceedings take place in public and that witnesses may be presented; and
- (f) the review body shall make its decisions or recommendations in a timely fashion, in writing, and shall include an explanation of the basis for each decision or recommendation.

7. Each Party shall adopt or maintain procedures that provide for:

- (a) rapid interim measures to preserve the supplier's opportunity to participate in the procurement. Such interim measures may result in suspension of the procurement process. The procedures may provide that overriding adverse consequences for the interests concerned, including the public interest, may be taken into account when deciding whether such measures should be applied. Just cause for not acting shall be provided in writing; and
- (b) where a review body has determined that there has been a breach or a failure as referred to in paragraph 1, corrective action or compensation for the loss or

damages suffered, which may be limited to either the costs for the preparation of the tender or the costs relating to the challenge, or both.

## Article XVIII Modifications and Rectifications to Coverage

### [CAN: Notification of Proposed Modification]

1. A Party shall notify the Committee of any proposed rectification, transfer of an entity from one annex to another, withdrawal of an entity or other modification of its annexes (any of which is hereinafter referred to as "modification"). The Party proposing the modification (hereinafter referred to as "modifying Party") shall include in the notification:

- (a) for any proposed withdrawal of an entity from its annexes in exercise of its rights on the grounds that government control or influence over the entity's covered procurement has been effectively eliminated, evidence of such elimination; or
- (b) for any other proposed modification, information as to the likely consequences of the change for the mutually agreed coverage provided for in this Chapter.

### Objection to Notification

2. A Party whose rights under this Chapter may be affected by a proposed modification notified under paragraph 1 may notify the Committee of any objection to the proposed modification. Such objections shall be made within 45 days from the date of the circulation to the other Party of the notification, and shall set out reasons for the objection.

### Consultations

3. The modifying Party and the Party making an objection (hereinafter referred to as "objecting Party") shall make every attempt to resolve the objection through consultations. In such consultations, the modifying and objecting Parties shall consider the proposed modification:

- (a) in the case of a notification under paragraph 1(a), in accordance with any indicative criteria adopted pursuant to paragraph 8(b), indicating the effective elimination of government control or influence over an entity's covered procurement; and
- (b) in the case of a notification under paragraph 1(b), in accordance with any criteria adopted pursuant to paragraph 8(c), relating to the level of compensatory adjustments to be offered for modifications, with a view to maintaining a balance of rights and obligations and a comparable level of mutually agreed coverage provided in this Chapter.

*Revised Modification*

4. Where the modifying Party and objecting Party resolve the objection through consultations, and the modifying Party revises its proposed modification as a result of those consultations, the modifying Party shall notify the Committee in accordance with paragraph 1, and any such revised modification shall only be effective after fulfilling the requirements of this Article.

*Implementation of Modifications*

5. A proposed modification shall become effective only where:

- (a) the other Party does not submit to the Committee a written objection to the proposed modification within 45 days from the date of circulation of the notification of the proposed modification under paragraph 1;
- (b) the objecting Party has notified the Committee that it withdraws its objections to the proposed modification; or
- (c) 150 days from the date of circulation of the notification of the proposed modification under paragraph 1 have elapsed, and the modifying Party has informed the Committee in writing of its intention to implement the modification.

*Withdrawal of Substantially Equivalent Coverage*

6. Where a modification becomes effective pursuant to paragraph 5(c), the objecting Party may withdraw substantially equivalent coverage. The objecting Party shall inform the Committee in writing of any such withdrawal at least 30 days before the withdrawal becomes effective. A withdrawal pursuant to this paragraph shall be consistent with any criteria relating to the level of compensatory adjustment adopted by the Committee pursuant to paragraph 8(c).

*Arbitration Procedures to Facilitate Resolution of Objections*

7. Where the Committee has adopted arbitration procedures to facilitate the resolution of objections pursuant to paragraph 8, a modifying or objecting Party may invoke the arbitration procedures within 120 days of circulation of the notification of the proposed modification:

- (a) Where no Party has invoked the arbitration procedures within the time-period:
  - (i) notwithstanding paragraph 5(c), the proposed modification shall become effective where 130 days from the date of circulation of the notification of the proposed modification under paragraph 1 have elapsed, and the modifying Party has informed the Committee in writing of its intention to implement the modification; and
  - (ii) the objecting Party may not withdraw coverage pursuant to paragraph 6.
- (b) Where a modifying Party or objecting Party has invoked the arbitration procedures:

- (i) notwithstanding paragraph 5(c), the proposed modification shall not become effective before the completion of the arbitration procedures;
- (ii) the objecting Party that intends to enforce a right to compensation, or to withdraw substantially equivalent coverage pursuant to paragraph 6, shall participate in the arbitration proceedings;
- (iii) the modifying Party should comply with the results of the arbitration procedures in making any modification effective pursuant to paragraph 5(c); and
- (iv) where the modifying Party does not comply with the results of the arbitration procedures in making any modification effective pursuant to paragraph 5(c), the objecting Party may withdraw substantially equivalent coverage pursuant to paragraph 6, provided that any such withdrawal is consistent with the result of the arbitration procedures.

#### *Committee Responsibilities*

8. The Committee shall adopt:

- (a) arbitration procedures to facilitate resolution of objections under paragraph 2;
- (b) indicative criteria that demonstrate the effective elimination of government control or influence over an entity's covered procurement; and
- (c) criteria for determining the level of compensatory adjustment to be offered for modifications made pursuant to paragraph 1(b) and of substantially equivalent coverage under paragraph 6.]

[Note: Parties agree that the procedure for modifications and rectifications for coverage shall be adapted to be more suitable for a bilateral agreement.]

[EU: the EU reserves the right to modify this proposal, following the outcome of the market access negotiations.]

#### **[Article XIX Institutions**

##### *Committee on Government Procurement*

1. There shall be a Committee on Government Procurement composed of representatives from each of the Parties. This Committee shall meet as necessary for the purpose of affording Parties the opportunity to consult on any matters relating to the operation of this Chapter or the furtherance of its objectives, and to carry out such other responsibilities as may be assigned to it by the Parties.]

## CHAPTER XX

### INTELLECTUAL PROPERTY

#### Article 1

#### **Objectives**

The objectives of this chapter are to:

- (a) facilitate the production and commercialization of innovative and creative products between the Parties; and
- (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.

## Sub-Section 1

**Principles**

## Article 2

**Nature and Scope of Obligations**

1. The Parties shall ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are [Canada: both] parties including the WTO Agreement on Trade-related Aspects of Intellectual Property (hereinafter called TRIPS Agreement). [EC: The provisions of this chapter shall complement and further specify the rights and obligations between the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property.]

2. For the purpose of this Agreement, intellectual property rights embody at least:

- (a) copyright [EC: , including copyright in computer programs and in databases];
- (b) rights related to copyright;
- (c) rights related to patents [EC: , including rights derived from supplementary protection certificates];
- (d) [EC: utility models in so far as these are protected as exclusive property rights in the domestic law concerned];
- (e) trade marks;
- (f) trade names in so far as these are protected as exclusive property rights in the domestic law concerned;
- (g) designs;
- (h) layout-designs (topographies) of integrated circuits;
- (i) geographical indications [EC: , including designations of origin];
- (j) [EC: plant variety rights]; and
- (k) protection of undisclosed information.

3. Protection of intellectual property includes protection against unfair competition as referred to in Article 10*bis* of the Paris Convention for the Protection of Industrial Property (Stockholm Act 1967).

## Article 3

**Public health concerns**

[EC: 1. The Parties recognise the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the World Trade Organisation. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with this Declaration.

2. The Parties shall contribute to the implementation and respect the Decision of the WTO General Council of 30 August 2003 on Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, as well as the Protocol amending the TRIPS Agreement, done at Geneva on 6 December 2005.]

[Canada: The Parties affirm the right to use, to the full extent, the flexibilities established in the TRIPS Agreement, including those related to the protection of public health and in particular the promotion of access to medicines for all. In addition, the Parties take note of the General Council Decisions of 30 August 2003 on the implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health and of 6 December 2005 on the Amendment of the TRIPS Agreement.]

[EC: Article 4  
**Exhaustion**

The Parties shall be free to establish their own regime for exhaustion of intellectual property rights, subject to the provisions of the TRIPS Agreement.]

*Sub-Section 2*

**Standards Concerning Intellectual Property Rights**

Article 5

**Copyright and Related Rights**

**Article 5.1 – Protection Granted**

1. The Parties shall [EC: respect the rights and obligations as set out in] [Canada: comply with] the Berne Convention for the Protection of Literary and Artistic Works (1886, last amended in 1979) [EC: , the WIPO Copyright Treaty – WCT (Geneva, 1996), and the WIPO Performances and Phonograms Treaty – WPPT (Geneva, 1996)]. The Parties shall comply with Articles 1 through 22 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961).

2. The moral rights of the authors [EC: and performers] shall be protected in accordance with Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works [EC: and Article 5 of the WIPO Performances and Phonograms Treaty (WPPT)].

3. [EC: The Parties may provide for limitations to the rights set out in this Article only in] [Canada: The Parties shall confine limitations or exceptions to certain special cases which do not conflict with a normal exploitation of the subject matter and do not unreasonably prejudice the legitimate interests of the right holder.]

[Canada: [Notwithstanding paragraph 3,] with respect to related rights, the Parties may provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention].

**Article 5.2 - Duration of Authors' Rights**

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author [EC: and for 70 years after his death irrespective of the date when the work is lawfully made available to the public.] [Canada: and

the remainder of the calendar year in which the author dies, and a period of at least 50 years following the end of that calendar year.

The term for photographs shall be at least 50 years from the making of the photograph.]

2. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.

3. [EC: In the case of anonymous or pseudonymous works, the term of protection shall run for 70 years after the work is lawfully made available to the public.] [Canada: Where the identity of the author of a work is unknown, copyright in the work shall subsist for whichever of the following terms ends earlier:

- (a) a term consisting of the remainder of the calendar year of the first publication of the work and a period of fifty years following the end of that calendar year, and
- (b) a term consisting of the remainder of the calendar year of the making of the work and a period of seventy-five years following the end of that calendar year.]

However, when the pseudonym adopted by the author:, or if he discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1 [Canada: and 2, as the case may be].

[EC: 4. Where a work is published in volumes, parts, installments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each separately.]

[EC: 5. In the case of works for which the term of protection is not calculated from the death of the author or authors and which have not been lawfully made available to the public within 70 years from their creation, the protection shall terminate.]

6. [EC: The term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of the music specifically created for use in the cinematographic or audiovisual work.]

[Canada: Except for cinematographic works in which the acting arrangement or acting form or the combination of incidents represented give the work a dramatic character, copyright in a cinematographic work or a compilation of cinematographic works shall subsist:

- (a) for the remainder of the calendar year of the first publication of the cinematographic work or of the compilation, and for a period of 50 years following the end of that calendar year; or



- (b) for the remainder of the calendar year of the first publication of the cinematographic work or of the compilation, and for a period of 50 years following the end of that calendar year.]

### ***Article 5.3 - Duration of Related Rights***

1. The rights of performers shall expire not less than 50 years after the date of the performance. [EC: However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.]

2. The rights of producers of the first fixation of a film shall expire not less than 50 years after the fixation is made. [EC: However, if the film is lawfully published or lawfully communicated to the public during this period, the rights shall expire not less than 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier. The term "film" shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.]

[EC: 3. The rights of producers of the first fixation of a film shall expire not less than 50 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during this period, the rights shall expire not less than 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier. The term "film" shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.]

4. [Canada: For wireless broadcasts, the] [EC: The] rights of broadcasting organizations shall expire not less than 50 years after the first transmission of a broadcast [EC: , whether this broadcast is transmitted by wire or over the air, including by cable or satellite].

### ***Article 5.4 – Protection of previously unpublished works***

[EC: The Parties shall ensure that any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the economic rights of the author. The term of protection of such rights shall be 25 years from the time when the work was first lawfully published or lawfully communicated to the public.]

[Canada: 1. The Parties shall ensure that the protection of unpublished works by authors who died before 1939 shall not extend more than five years beyond the coming into force of this Agreement.

2. Paragraph 1 does not apply to works created by or for central or sub-central governments.

3. Nothing in this article prevents Parties from granting protection to previously unpublished works once they are published.]

#### *Article 5.5 – Co-operation on Collective Management of Rights*

The Parties shall [EC: endeavour to facilitate] [Canada: encourage] the establishment of arrangements between their respective collecting societies with the purpose of mutually ensuring easier access and delivery of works between the territories of the Parties, as well as ensuring mutual transfer of royalties for use of the Parties' works or other protected subject matters. [EC: The Parties shall endeavour to achieve a high level of rationalisation and transparency with regard to the execution of the tasks of their respective collecting societies.]

#### [EC: Article 5.6 – Resale Rights]

1. The Parties shall provide, for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.

2. The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.

3. The Parties may provide that the right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and the resale price does not exceed a certain maximum amount.

4. The royalty shall be payable by the seller. The Parties may provide that one of the natural or legal persons referred to in paragraph 2 other than the seller shall alone be liable or shall share liability with the seller for payment of the royalty.]

#### *Article 5.7 - Fixation right*

1. For the purpose of this provision fixation means the embodiment of sounds and images, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

2. The Parties shall provide for performers the exclusive right to authorise or prohibit the fixation of their performances.

3. The Parties shall provide for broadcasting organisations the exclusive right to authorise or prohibit the fixation of their [Canada: wireless] broadcasts [EC: , whether these broadcasts are transmitted by wire or over the air, including by cable or satellite].

4. A cable distributor shall not have the right provided for in [EC: paragraph 2] [Canada: paragraph 3] where it merely retransmits by cable the broadcasts of broadcasting organizations.

**Article 5.8 – Broadcasting and Communication to the Public**

1. The Parties shall provide performers the exclusive right to authorize or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

[EC: 2. The Parties shall ensure that a single equitable remuneration is paid by the user if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and to ensure that this remuneration is shared between the relevant performers and phonogram producers. The Parties may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.

3. The Parties shall provide broadcasting organizations the exclusive right to authorize or prohibit the re-transmission of their broadcasts by any means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.]

[EC: **Article 5.9 - Distribution right**

1. The Parties shall provide for authors, in respect of the original of their works or of copies thereof, the exclusive right to authorise or prohibit any form of distribution to the public by sale or otherwise.

2. The Parties shall provide the exclusive right to make available to the public, by sale or otherwise, the works indicated in points (a) to (d), including copies thereof:

- (a) for performers, fixations of their performances;
- (b) for phonogram producers, their phonograms;
- (c) for producers of the first fixation of films, the original and copies of their films;
- (d) for broadcasting organisations, fixations of their broadcasts as set out in Article 5.7 (2).]

[Canada: **Article 5.X – Protection of Encrypted Program-Carrying Satellite Signals**

*To be specified later. ]*

**Article 5.10 - Reproduction right**

The Parties shall provide for the exclusive right to authorise or prohibit direct or indirect [EC: , temporary or permanent] reproduction by any means and in any form, in whole or in part:

- (a) for authors, of their works;

[EC: (b) for performers, of fixations of their performances;]

(c) for phonogram producers, of their phonograms;

[EC: (d) for the producers of the first fixations of films, in respect of the original and copies of their films;]

(e) for broadcasting organisations, of fixations of their broadcasts [EC:; whether those broadcasts are transmitted by wire or over the air, including by cable or satellite.]

***Article 5.11 - Right of communication to the public of works and right of making available to the public other subject-matter***

1. The Parties shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means [EC:; including the making available] to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

[EC: 2. The Parties shall provide for the exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them:

(a) for performers, of fixations of their performances;

(b) for phonogram producers, of their phonograms;

(c) for the producers of the first fixations of films, of the original and copies of their films;

(d) for broadcasting organisations, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.

3. The Parties agree that the rights referred to in paragraphs 1 and 2 shall not be exhausted by any act of communication to the public or making available to the public as set out in this Article.]

[EC: ***Article 5.12 - Exceptions and limitations***

1. The Parties shall provide that temporary acts of reproduction referred to in Article 5.10, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable:

(a) a transmission in a network between third parties by an intermediary, or

(b) a lawful use of a work or other subject-matter to be made, and which have no independent economic significance,

shall be exempted from the reproduction right provided for in Article 5.10.

2 Where the Parties provide for an exception or limitation to the right of reproduction pursuant to Article 5.10, they may provide similarly for an exception or limitation to the right

of distribution as referred to in paragraph 1 of Article 5.9 to the extent justified by the purpose of the authorised act of reproduction.]

[EC: **Article 5.13 - Protection of Technological Measures**

1. The Parties shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective.

2. The Parties shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:

- (a) are promoted, advertised or marketed for the purpose of circumvention of, or
- (b) have only a limited commercially significant purpose or use other than to circumvent, or
- (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitation the circumvention of,

any effective technological measures.

3. For the purposes of this Agreement, the expression 'technological measures' means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised

by the right holder of any copyright or any right related to copyright as provided for by law. Technological measures shall be deemed 'effective' where the use of a protected work or other subject matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.

4. Where Parties provide for limitations to the rights set out in paragraphs 1, 2 and 3 of Article 5.8 they may also make provision to ensure that right holders make available to a beneficiary of an exception or limitation the means of benefiting from that exception or limitation – to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject matter concerned.]

[EC: **Article 5.14 - Protection of Rights Management Information**

1. The Parties shall provide adequate legal protection against any person knowingly performing without authority any of the following acts:

- (a) the removal or alteration of any electronic rights-management information;
- (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected under this Agreement from which electronic rights-management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any rights related to copyright as provided by law.

2. For the purposes of this Agreement, the expression 'rights-management information' means any information provided by right holders which identifies the work or other subject-matter referred to in this Agreement, the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.

3. Paragraph 2 shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in this Agreement.]

**[Canada: Article 5.X – Camcording**

*To be specified later]*

## Article 6 Trademarks

### ***Article 6.1 – International Agreements***

[EC: The European Community and Canada shall make all reasonable efforts to comply with the Trademark Law Treaty (1994) and to accede to the Singapore Treaty on the law of Trademarks (2006) as well as the *Madrid Agreement concerning the International Registration of Marks* and the related Protocol.] [Canada: The European Community and Canada shall make all reasonable efforts to comply with the Singapore Treaty on the Law of Trademarks (2006), and Canada shall make all reasonable efforts to accede to the Protocol related to the *Madrid Agreement concerning the International Registration of Marks*.]

### ***Article 6.2 – Registration Procedure***

[EC: The European Community and Canada shall provide for a system for the registration of trademarks in which reasons for the refusal to register a trademark shall be communicated in writing to the applicant who will have the opportunity to contest such refusal and to appeal a final refusal before Court. The European Community and Canada shall introduce the possibility to file oppositions against trademark registrations. Such opposition proceedings shall be adversarial. The Parties shall provide a publicly available electronic database of trademark applications and trademark registrations.]

[Canada: Each Party shall provide a system for the registration of trademarks , which shall include:

- a) examination of applications;
- b) notice to be given to an applicant of the reasons for the refusal to register a trademark;
- c) a reasonable opportunity for the applicant to respond to the notice;
- d) publication of each trademark either before or promptly after it is registered;
- e) a reasonable opportunity for interested parties to petition to cancel the registration of a trademark; and
- f) a reasonable opportunity for interested persons to oppose the registration of a trademark.]

**[EC: Article 6.3 – Well-known Trademarks]**

The Parties shall co-operate with the purpose of making protection of well-known trademarks, as referred to in Article 6*bis* of the Paris Convention (1967) and Article 16(2) and (3) of the TRIPS Agreement, effective.]

**[EC: Article 6.4 – Exceptions to the Rights Conferred by a Trademark]**

The Parties shall provide for the fair use of descriptive terms, including geographical indications, as a limited exception to the rights conferred by a trademark. They may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.]

## Article 7

### Geographical Indications

[Canada:

1. In implementing their obligations under Articles 22, 23 and 24 of the TRIPS Agreement, the parties agree to the following.
2. The names listed in Annex I are geographical indications within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement.
3. The names listed in Annex I(a) are geographical indications which identify wines as originating, as specified in Annex I(a), in the territory of the European Community, or a region or locality in that territory.
4. The names listed in Annex I(b) are geographical indications which identify spirits as originating, as specified in Annex I(b), in the territory of the European Community, or a region or locality in that territory.
5. The names listed in Annex I(c) are geographical indications which identify wines as originating, as specified in Annex I(c), in the territory of Canada, or a region or locality in that territory.
6. The names listed in Annex I(d) are geographical indications which identify spirits as originating, as specified in Annex I(d), in the territory of Canada, or a region or locality in that territory.
7. The applicability of paragraphs (2) to (6) shall not be made subject to any application or opposition process.]<sup>45</sup>

**[EC: Article 7.1 – Protection of geographical indications for agricultural products, foodstuffs<sup>46</sup>, wines<sup>47</sup> and spirit drinks<sup>48</sup>**

<sup>45</sup> Note: Annexes from Canadian GI proposal located at the end of this chapter (p. 34).

<sup>46</sup> Agricultural products and foodstuffs in the meaning of this Article 7 are products falling within the scope of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.

<sup>47</sup> Wines in the meaning of this Article 7 are products falling under heading 22.04 of the HS and which:

1. Having examined the geographical indications of Canada listed in [Annex – agricultural products, foodstuff, wine, spirit drinks - Canada], which have been registered by Canada under [reference to Canadian legislation], the European Community undertakes to protect the geographical indications of Canada listed in [Annex – agricultural products, foodstuff, wine, spirit drinks - Canada] according to the level of protection laid down in this Article 7.
2. Having examined the geographical indications of the European Community listed in [Annex – agricultural products, foodstuff, wine – European Community], which have been registered by the European Community under Regulation (EC) No 510/2006 and Regulation (EC) No 1234/2007, Canada undertakes to protect the geographical indications of the European Community listed in [Annex – agricultural products, foodstuff, wine, spirit drinks – European Community] according to the level of protection laid down in this Article 7.
3. This Article 7.1 shall apply to geographical indications for wines and spirit drinks with respect to geographical indications not covered by Article 7.2.

**Article 7.2 – Protection of specific geographical indications for wines, aromatised wines<sup>49</sup> and spirit drinks**

1. In Canada, the geographical indications listed in [Annex – wines, aromatised wines, spirit drinks – European Community] shall be protected according to the level of protection laid down in this Article 7 for those products which use these geographical indications in accordance with the relevant laws of the European Community on geographical indications.
2. In the European Community, the geographical indications listed in [Annex – wines, aromatised wines, spirit drinks – Canada] shall be protected according to the level of protection laid down in this Article 7 for those products which use these geographical indications in accordance with the relevant laws of Canada on geographical indications.

*(Explanatory note: As far as geographical indications for wines and spirits are concerned, this Article would apply to those geographical indications and customary terms already covered by the agreement between the European Community and Canada on trade in wines and spirit drinks by the time the FTA enters into force.)*

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(a) comply with Council Regulation (EC) 1234/2007 of 22 October 2007, Commission Regulation (EC) 606/2009 of 10 July 2009 and Commission Regulation (EC) 607/2009 of 14 July 2009, or legislation replacing them; or  
(b) [reference to Canadian legislation]

48 Spirit drinks in the meaning of this Article 7 are products falling under heading 22.08 of the HS and which:

(a) comply with Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008, and Commission Regulation (EEC) No 1014/90 of 24 April 1990, or legislation replacing them; or  
(b) [reference to Canadian legislation]

49 Aromatised wines in the meaning of this Article 7 are products falling under heading 22.05 of the HS and which:

(a) comply with Council Regulation (EEC) No 1601/1991 of 10 June 1991, or legislation replacing it; or  
(b) [reference to Canadian legislation]



*Article 7.3 – Right of use*

1. A name protected under this Article 7 may be used by any operator marketing agricultural products, foodstuffs, wines, aromatised wines or spirit drinks conforming to the corresponding specification.
2. Once a geographical indication is protected under this Article 7, the Contracting Parties shall not subject the use of such protected name of the other side to any registration of users, or further charges.

*Article 7.4 – Scope of protection*

1. Geographical indications referred to in Articles 7.1 and 7.2 as well as those added in line with Article 7.6 shall be protected against:
  - (a) any direct or indirect commercial use of a protected name:
    - for comparable products not compliant with the product specification of the protected name, or
    - in so far as such use exploits the reputation of a geographical indication;
  - (b) any misuse, imitation or evocation<sup>50</sup>, even if the true origin of the product is indicated or if the protected name is translated or used in transcription or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation", "flavour", "like" or similar;
  - (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
  - (d) any other practice liable to mislead the consumer as to the true origin of the product.
2. Geographical indications protected under the provisions of this Article 7 in a non-latin alphabet, shall be protected together with their transcription in latin characters. This transcription may also be used for labelling purposes for the products concerned.
3. Protected names may not become generic.
4.
  - (a) The Parties shall refuse to register or shall invalidate a trademark that corresponds to any of the situations referred to in paragraph (1) in relation to a protected geographical indication for like products, provided an application to register the trademark is submitted after the date of application for protection or recognition of the geographical indication in the territory concerned.
  - (b) For geographical indications referred to in Articles 7.1 and 7.2, the date of application for protection or recognition shall be the date of entry into force of this agreement.

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<sup>50</sup> Is considered an evocation, notably, the illicit use in any way for products falling under heading 20.09 of the Harmonised System of the International Convention on the Harmonised Commodity Description and Coding System, done at Brussels on 14 June 1983, although only insofar as they are referred to wines falling under its heading No. 22.04, aromatised wines falling under its heading No. 22.05 and spirit drinks falling under its heading No. 22.08.

(c) For geographical indications referred to in Article 7.6, the date of application for protection or recognition shall be the date of the transmission of a request to the other Party to protect a geographical indication.

5. The protection of a geographical indication under this Article is without prejudice to the continued use of a trademark which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in the territory of a Party before the date of the application for protection or recognition of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the legislation of the Party concerned. The date of application for protection or recognition of the geographical indication is determined in accordance with paragraph (4).
6. This Agreement shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead consumers.
7. Where the European Community or Canada, in the context of negotiations with a third country, proposes to protect a geographical indication of the third country, and the name is homonymous with a geographical indication of the other Party, the latter shall be informed and be given the opportunity to comment before the name becomes protected.
8. Nothing in this Article 7 shall oblige the European Community or Canada to protect a geographical indication which is not or ceases to be protected in its country of origin. The European Community and Canada shall notify each other if a geographical indication ceases to be protected in its country of origin.

#### ***Article 7.5 – Enforcement of protection***

The Parties shall enforce the protection provided for in Articles 7.1 to 7.4 by appropriate administrative action by public authorities. They shall also enforce such protection at the request of an interested party.

#### ***Article 7.6 – Addition of Geographical Indications for protection***

1. The European Community and Canada agree to add geographical indications to be protected to the Annexes referred to in Article 7.1 in accordance with the procedure set out in Article 7.7.
2. The European Community and Canada agree to process, without undue delay, the other's requests for adding geographical indications to be protected to the Annexes referred to in Article 7.1.
3. A name may not be registered as a geographical indication where it conflicts with the name of a plant variety, including a grape variety, or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.
4. If geographical indications are wholly or partially homonymous, protection shall be granted to each indication provided that it has been used in good faith and with due regard for local and traditional usage and the actual risk of confusion. Without prejudice to Article 23 of the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), the European Community and Canada shall mutually decide the practical conditions of use under which the homonymous geographical indications will

be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled. A homonymous name which misleads the consumer into believing that products come from another territory shall not be registered even if the name is accurate as far as the actual territory, region or place of origin of the product in question is concerned.

5. The European Community and Canada shall have no obligation to protect a geographical indication where, in the light of a reputed or well-known trademark, protection is liable to mislead consumers as to the true identity of the product.
6. Without prejudice to paragraph (5), the Parties shall protect a geographical indications also where a prior trademark in the sense of Article 7.4 (4) exists.

#### *Article 7.7 – Joint Committee on geographical indications*

1. The Parties agree to set up a Joint Committee on geographical indications consisting of representatives of the European Community and Canada with the purpose of monitoring the development of this Article 7 and intensifying their co-operation and dialogue on geographical indications.
2. The Joint Committee may make recommendation and adopt decisions by consensus. It shall determine its own rules of procedure. It shall meet at the request of either the European Community or Canada, alternatively in the European Community and in Canada, at a time and a place and in a manner (which may include by videoconference) mutually determined by the two sides, but no later than 90 days after the request.
3. The Joint Committee may decide:
  - (a) to modify the Annexes referred to in Article 7.1, to add geographical indications that, after having completed the examination referred to, are also determined by the other side to constitute geographical indications and will be protected by that other side;
  - (b) to modify the Annexes referred to in Articles 7.1 and 7.2 and to remove individual geographical indications that cease to be protected in the Party of origin or that, in accordance with the applicable legislation, no longer meet the conditions to be considered a geographical indication in the other Party; and
  - (c) that a reference to legislation in this Article 7 should be taken to be a reference to that legislation as amended and replaced and in force at a particular date after the entry into force of this agreement.
4. The Joint Committee shall also see to the proper functioning of this Article 7 and may consider any matter related to its implementation and operation. In particular, it shall be responsible for:
  - (a) exchanging information on legislative and policy developments on geographical indications and any other matter of mutual interest in the area of geographical indications;
  - (b) exchanging information on geographical indications for the purpose of considering their protection in accordance with this Article 7;
  - (c) considering any matter arising from technical specifications or registered products; and

- (d) exchanging information to optimise the operation of this agreement.

#### **Article 7.8 – General rules**

1. Unless otherwise provided for in this Agreement, importation, export and marketing of products referred to in Articles 7.1 and 7.2 shall be conducted in compliance with the laws and regulations applying in the territory of the importing Party.
2. Each Party may implement its undertakings by entering the geographical indications of the other Party into a domestic register or by means of any other method of implementation that meets the level of protection herein established.
3. The European Community and Canada may make publicly available the specifications or a summary thereof and contact points for control provisions corresponding to geographical indications of the other side protected pursuant to this Article 7.
4. Geographical indications protected under this Article 7 may only be cancelled by the Party in which the product originates.
5. A product specification referred to in this Article 7 shall be that approved, including any amendments also approved, by the authorities of the Party in the territory of which the product originates.
6. The provisions of this Article 7 are without prejudice to the right to seek recognition and protection of a geographical indication under the relevant legislation of the European Community or Canada.]

### **Article 8 Designs**

#### **Article 8.1 - International Agreements**

The European Community and Canada [EC: shall accede] [Canada: endeavour to accede] to the Geneva Act [EC: to] [Canada: of] the Hague Agreement Concerning the International Registration of Industrial Designs (1999).

#### **[EC: Article 8.2 - Definitions**

1. For the purpose of this agreement "design" means the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colours, shape, texture and/or materials of the product itself and/or its ornamentation.
2. In this context, "product" means any industrial or handicraft item, including *inter alia* parts intended to be assembled into a complex product, packaging, get up, graphic symbols and typographic typefaces, but excluding computer programs.

"Complex product" means a product which is composed of multiple components which can be replaced permitting disassembly and reassembly of the product.]

**[EC: Article 8.3 - Requirements for Protection of Registered Designs]**

1. The European Community and Canada shall provide for the protection of independently created designs that are new and have individual character. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with the provisions of this article.
2. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and to have individual character:
  - (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter, and
  - (b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and individual character.
3. "Normal use" within the meaning of paragraph 2(a) shall mean use by the end user, excluding maintenance, servicing or repair work.]

**[EC: Article 8.4 - Rights Conferred by Registration]**

The owner of a registered design shall have the right to prevent third parties not having the owner's consent, at least from making, offering for sale, selling, importing, exporting, stocking or using articles bearing or embodying the protected design when such acts are undertaken for commercial purposes, unduly prejudice the normal exploitation of the design, or are not compatible with fair trade practice.]

**[EC: Article 8.5 – Protection Conferred to Unregistered Designs]**

The European Community and Canada shall provide the legal means to prevent the use of an unregistered design, only if the contested use results from copying it. Such use shall at least cover offering for sale, putting on the market, importing and exporting the product.]

**[EC: Article 8.6 - Term of Protection]**

1. The duration of protection available in the Parties following registration shall amount to at least five years. The right holder may request to have the term of protection renewed for at least one more period of five years with a maximum of up to a total term of 25 years from the date of filing.
2. The duration of protection available in the European Community and Canada for an unregistered design shall amount to at least three years from the date on which the design was made available to the public in one of the Parties.]

**[EC: Article 8.7 - Exceptions]**

1. The Parties may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

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2. Design protection shall not extend to designs dictated solely by technical or functional considerations. In particular a design right shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

3. Notwithstanding paragraph 2, protection shall subsist in a design serving the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

4. A design right shall not subsist in a design which is contrary to public order or to accepted principles of morality.]

### [EC: *Article 8.8 - Relationship to Copyright*

The subject matter of a design right may be protected under copyright law if the conditions for such protection are met. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.]

## Article 9 Patents

### *Article 9.1 - International Agreements*

The Parties shall [EC: make all reasonable efforts to comply with Articles 1 through 16 of] [Canada: endeavour to accede to] the Patent Law Treaty (Geneva, 2000).

### [EC: *Article 9.2 - Supplementary Protection Certificates*

1. The Parties recognise that medicinal and plant protection products protected by a patent on their respective territory may be subject to an administrative authorisation procedure before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.

2. The Parties shall provide for a further period of protection for a medicinal or plant protection product which is protected by a patent and which has been subject to an administrative authorisation procedure, that period being equal to the period referred to in paragraph 1 second sentence above, reduced by a period of five years.

3. Notwithstanding paragraph 2, the duration of the further period of protection may not exceed five years.

4. A medicinal product for which paediatric studies have been carried out may be entitled to a six months extension of the period mentioned in paragraphs 2 and 3.]

## Article 10

**Protection of Data Submitted to Obtain an Authorisation to put a Pharmaceutical Product on the Market**

1. The Parties shall guarantee the confidentiality, non-disclosure and non-reliance of data submitted for the purpose of obtaining an authorisation to put a pharmaceutical product on the market.

[EC: 2. For that purpose, the Parties shall ensure in their respective legislation that any information submitted to obtain an authorisation to put a pharmaceutical product on the market will remain undisclosed to third parties and benefit from a period of at least ten years of protection against unfair commercial use starting from the date of grant of marketing approval in either of the Parties.

(a) during a period of at least eight years, no person or entity (public or private), other than the person or entity who submitted such undisclosed data, will, without the explicit consent of the person or entity who submitted this data, rely directly or indirectly on such data in support of an application for the authorisation to put a pharmaceutical product on the market;

(b) during a ten-year period, a marketing authorization granted for a subsequent application will not permit placing a pharmaceutical product on the market, unless the subsequent applicant submitted his/her own data (or data used with authorization of the right holder) meeting the same requirements as the first applicant. Products registered without submission of such data would be removed from the market until the requirements were met.

3. In addition, the ten-year period referred shall be extended to a maximum of eleven years if, during the first eight years after obtaining the authorisation in either of the Parties, the holder of the basic authorisation obtains an authorisation for one or more new therapeutic indications which are considered of significant clinical benefit in comparison with existing therapies.]

[EC: 4. If a Party relies on "patent linkage" mechanisms whereby the granting of marketing authorizations (or notices of compliance or similar concepts) for generic medicines is linked to the existence of patent protection, it shall ensure that the patent holders and the manufacturers of generic medicines are treated in a fair and equitable way, including regarding their respective rights of appeal.]

## [EC: Article 11

**Data Protection on Plant Protection Products and Rules on Avoidance of Duplicative Testing**

1. The Parties shall determine safety and efficacy requirements before authorising the placing on the market of plant protection products.

2. The Parties shall recognise a temporary right to the owner of a test or study report submitted for the first time to achieve a marketing authorisation for a plant protection product.

During such period, the test or study report will not be used for the benefit of any other person aiming to achieve a marketing authorisation for plant protection product, except when the

explicit consent of the first owner is proved. This right will be hereinafter referred as data protection.

3. The test or study report should fulfil the following conditions:

- (a) be necessary for the authorisation or for an amendment of an authorisation in order to allow the use on other crops, and
- (b) be certified as compliant with the principles of good laboratory practice or of good experimental practice.

4. The period of data protection should be ten years starting at the date of the first authorisation in that Party. In case of low risk plant protection products the period can be extended to 13 years.

5. Those periods shall be extended by three months for each extension of authorisation for minor uses<sup>51</sup> if the applications for such authorisations are made by the authorisation holder at the latest five years after the date of the first authorisation. The total period of data protection may in no case exceed 13 years. For low risk plant protection products the total period of data protection may in no case exceed 15 years.

6. A test or study shall also be protected if it was necessary for the renewal or review of an authorisation. In those cases, the period for data protection shall be 30 months.

7. Rules to avoid duplicative testing on vertebrate animals will be laid down by the Parties. Any applicant intending to perform tests and studies involving vertebrate animals shall take the necessary measures to verify that those tests and studies have not already been performed or initiated.

8. The new applicant and the holder or holders of the relevant authorisations shall make every effort to ensure that they share tests and studies involving vertebrate animals. The costs of sharing the test and study reports shall be determined in a fair, transparent and non-discriminatory way. The prospective applicant is only required to share in the costs of information he is required to submit to meet the authorisation requirements.

9. Where the new applicant and the holder or holders of the relevant authorisations of plant protection products cannot reach agreement on the sharing of test and study reports involving vertebrate animals, the new applicant shall inform the Party.

10. The failure to reach agreement shall not prevent the Party from using the test and study reports involving vertebrate animals for the purpose of the application of the new applicant.]

11. The holder or holders of the relevant authorisation shall have a claim on the prospective applicant for a fair share of the costs incurred by him. The Party may direct the parties involved to resolve the matter by formal and binding arbitration administered under national law.

[Canada: Article X: **Trade Secrets**

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<sup>51</sup> Minor use: use of a plant protection product in a particular Party on plants or plant products which are not widely grown in that particular Party or widely grown to meet an exceptional plant protection need.



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1. Each Party shall provide the legal means for any person to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the person lawfully in control of the information in a manner contrary to honest commercial practices, in so far as:

- (a) the information is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons that normally deal with the kind of information in question;
- (b) the information has actual or potential commercial value because it is secret; and
- (c) the person lawfully in control of the information has taken reasonable steps under the circumstances to keep it secret.

2. A Party may require that to qualify for protection a trade secret must be evidenced in documents, electronic or magnetic means, optical discs, microfilms, films or other similar instruments.

3. No Party may limit the duration of protection for trade secrets, so long as the conditions in paragraph 1 exist.

4. No Party may discourage or impede the voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on such licenses or conditions that dilute the value of the trade secrets.

5. If a Party requires, as a condition for approving the marketing of pharmaceutical or agricultural chemical products that utilize new chemical entities, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect against disclosure of the data of persons making such submissions, where the origination of such data involves considerable effort, except where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

6. Each Party shall provide that for data subject to paragraph 5 that are submitted to the Party after the date of entry into force of this Agreement, no person other than the person that submitted them may, without the latter's permission, rely on such data in support of an application for product approval during a reasonable period of time after their submission. For this purpose, a reasonable period shall normally mean not less than five years from the date on which the Party granted approval to the person that produced the data for approval to market its product, taking account of the nature of the data and the person's efforts and expenditures in producing them. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence and bioavailability studies.

7. Where a Party relies on a marketing approval granted by another Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied on shall begin with the date of the first marketing approval relied on.]

LIMITED

*Draft consolidated CETA text as at 13.1.10*

[EC: Article 12

**Plant Varieties**

The Parties shall co-operate to promote and reinforce the protection of plant varieties based on the International Convention for the Protection of New Varieties of Plants (UPOV) as revised on March 19, 1991, including the optional exception to the breeder's right as referred to in Article 15(2) of the said Convention.]

[Canada: Article 13

**Public Disclosure**

Each Party shall provide a 12-month grace period for patent applications without any formal requirements such as a declaration of disclosures made.]

LIMITED

## Sub-Section 3

**Enforcement of Intellectual Property Rights**

[EC: Article 14]

**General Obligations**

1. The Parties shall ensure that any measures, procedures and remedies for the enforcement of intellectual property rights<sup>52</sup> are fair and equitable, and are not unnecessarily complicated or costly, nor entail unreasonable time-limits or unwarranted delays.
2. Those measures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.]

[EC: Article 15]

**Entitled Applicants**

The Parties shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this section and in Part III of the TRIPS Agreement:

- (a) the holders of intellectual property rights in accordance with the provisions of the applicable law,
- (b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law,
- (c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law,
- (d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.]

[EC: Article 16]

**Evidence**

The Parties shall take such measures as are necessary, in the case of an infringement of an intellectual property right committed on a commercial scale, to enable the competent judicial authorities to order, where appropriate and following an application, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.]

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<sup>52</sup> For the purposes of this sub-section, unless otherwise mentioned, "intellectual property rights" should at least cover the following rights: copyright, rights related to copyright, rights of the creator of the topographies of a semi conductor product; trademark rights; design rights, patent rights, including rights derived from supplementary protection certificates; geographical indications; utility model rights; plant variety rights; and trade names in so far as these are protected as exclusive rights in the national law concerned

[EC: Article 17]

**Measures for Preserving Evidence**

1. The Parties shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by an entity who has presented reasonably available evidence to support his claims that his intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.
2. Each Party may provide that such measures include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto. Those measures shall be taken, if necessary, without the other party being heard, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.]

[EC: Article 18]

**Right of Information**

1. The Parties shall ensure that, in the context of proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person who:
  - (a) was found in possession of the infringing goods on a commercial scale;
  - (b) was found to be using the infringing services on a commercial scale;
  - (c) was found to be providing on a commercial scale services used in infringing activities; or
  - (d) was indicated by the person referred to in point (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or the provision of the services.
2. The information referred to in paragraph 1 shall, as appropriate, comprise:
  - (a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;
  - (b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.
3. Paragraphs 1 and 2 shall apply without prejudice to other statutory provisions which:
  - (a) grant the right holder rights to receive fuller information;

- (b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;
- (c) govern responsibility for misuse of the right of information;
- (d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit to his own participation or that of his close relatives in an infringement of an intellectual property right ; or
- (e) govern the protection of confidentiality of information sources or the processing of personal data.]

[EC: Article 19

#### **Provisional and Precautionary Measures**

1. The Parties shall ensure that the judicial authorities may, at the request of the applicant issue an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by domestic law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right.

2. An interlocutory injunction may also be issued to order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.

3. In the case of an infringement committed on a commercial scale, the Parties shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.]

[EC: Article 20

#### **Corrective Measures**

1. The Parties shall ensure that the competent judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the recall, definitive removal from the channels of commerce or destruction of goods that they have found to be infringing an intellectual property right. If appropriate, the competent judicial authorities may also order destruction of materials and implements principally used in the creation or manufacture of those goods.

2. The judicial authorities shall order that those measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.]

[EC: Article 21]

**Injunctions**

1. The Parties shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement.

2. Where provided for by domestic law, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance. The Parties shall also ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.]

[EC: Article 22]

**Alternative Measures**

The Parties may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 20 'corrective measures' and/or Article 21 'injunctions', the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 20 'corrective measures' and/or Article 21 'injunctions' if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory. ]

[EC: Article 23]

**Damages**

1. The Parties shall ensure that when the judicial authorities set the damages:
  - (a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement ; or
  - (b) as an alternative to (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.
2. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, the Parties may lay down that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.]

[EC: Article 24]

**Legal Costs**

The Parties shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall as a general rule be borne by the unsuccessful party, unless equity does not allow this. ]

[EC: Article 25]

**Publication of Judicial Decisions**

The Parties shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part. The Parties may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.]

[EC: Article 26]

**Presumption of Authorship or Ownership**

For the purposes of applying the measures, procedures and remedies provided for under this Agreement in relation to the enforcement of copyright and related rights,

- (a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his/her name to appear on the work in the usual manner;
- (b) the provisions under (a) shall apply mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter.]

[EC: Article 27]

**Administrative Procedures**

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in the relevant provisions of this sub-section.]

[EC: Article 28]

**Criminal Sanctions**

*This text will be specified later]*

[EC: Article 29]

**Liability of Intermediary Service Providers*****Article 29.1 – Use of Intermediaries' Services***

The Parties recognise that the services of intermediaries may be used by third parties for infringing activities. To ensure the free movement of information services and at the same time enforce intellectual property rights in the digital environment, the Parties shall provide for the following measures for intermediary service providers where they are in no way involved with the information transmitted.



***Article 29.2 - Liability of Intermediary Service Providers: "Mere Conduit"***

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, Parties shall ensure that the service provider is not liable for the information transmitted, on condition that the provider:

- (a) does not initiate the transmission;
- (b) does not select the receiver of the transmission; and
- (c) does not select or modify the information contained in the transmission.

2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement.

***Article 29.3 - Liability of Intermediary Service Providers: "Caching"***

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, Parties shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that:

- (a) the provider does not modify the information;
- (b) the provider complies with conditions on access to the information;
- (c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
- (d) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
- (e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

2. This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement.

***Article 29.4 - Liability of Intermediary Service Providers: Hosting***

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the Parties shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:

(a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or

(b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.

3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for the Parties of establishing procedures governing the removal or disabling of access to information.

***Article 29.5 - No General Obligation to Monitor***

1. The Parties shall not impose a general obligation on providers, when providing the services covered by Articles 29.2, 29.3 and 29.4, to monitor the information which they transmit or store, nor a general obligation actively to seek facts or circumstances indicating illegal activity.

2. The Parties may establish obligations for information society service providers promptly to inform the competent public authorities of alleged illegal activities undertaken or information provided by recipients of their service or obligations to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.]

[EC: Article 30  
**Border Measures**

1. The Parties shall, unless otherwise provided for in this section, adopt procedures<sup>53</sup> to enable a right holder, who has valid grounds for suspecting that the importation, exportation, re-exportation, entry or exit of the customs territory, placement under a suspensive procedure or placement under a free zone or a free warehouse of goods infringing an intellectual property right<sup>54</sup> may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation or the detention of such goods.

2. The Parties shall provide that when the customs authorities, in the course of their actions and before an application has been lodged by a right holder or granted, have sufficient grounds for suspecting that goods infringe an intellectual property right, they may suspend the release of the goods or detain them in order to enable the right holder to submit an application for action in accordance with the previous paragraph.

3. The competent customs department shall inform the right-holder and the holder of the goods of its action and is authorised to inform them of the actual or estimated quantity and the actual or supposed nature of the goods whose release has been suspended or which have been detained.

4. With a view to establishing whether an intellectual property right has been infringed, the customs office shall inform the right-holder, at his request and if known, of the names and addresses of the consignee, the consignor or the holder of the goods and the origin and provenance of goods suspected of infringing an intellectual property right.

The customs office shall give the applicant the opportunity to inspect goods whose release has been suspended or which have been detained. When examining goods, the customs office may take samples and hand them over or send them to the right-holder, at his express request, strictly for the purposes of analysis and to facilitate the subsequent procedure.

5. Any rights or obligations established in the implementation of Section 4 of Part III of the TRIPS Agreement concerning the importer shall be also applicable to the exporter or to the holder of the goods.]

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<sup>53</sup> It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder.

<sup>54</sup> For the purposes of this provision, "goods infringing an intellectual property right" means:

- (a) "counterfeit goods", namely:
  - (i) goods, including packaging, bearing without authorisation a trademark identical to the trademark duly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the trademark holder's rights;
  - (ii) any trademark symbol (logo, label, sticker, brochure, instructions for use or guarantee document), even if presented separately, on the same conditions as the goods referred to in point (i);
  - (iii) packaging materials bearing the trademarks of counterfeit goods, presented separately, on the same conditions as the goods referred to in point (i);
- (b) "pirated goods", namely goods which are or contain copies made without the consent of the holder, or of a person duly authorised by the holder in the country of production, of a copyright or related right or design right, regardless of whether it is registered in national law;
- (c) goods which, according to the law of the Party in which the application for customs action is made, infringe a patent, a plant variety right, a design or a geographical indication.

[EC: Article 31]

**Codes of Conduct and Forensic Co-operation**

1. The Parties shall encourage:
  - (a) the development by trade or professional associations or organisations of codes of conduct aimed at contributing towards the enforcement of intellectual property rights, particularly by recommending the use on optical discs of a code enabling the identification of the origin of their manufacture;
  - (b) the submission to the competent authorities of the Parties of draft codes of conduct and of any evaluations of the application of these codes of conduct.
2. The Parties shall co-operate in order to identify forensically illegal optical discs which are produced by plants located in their territory.]

*Sub-Section 4*

[EC: Article 32]

**Co-operation**

1. The Parties agree to co-operate with a view to supporting implementation of the commitments and obligations undertaken under this chapter.
2. *[To be specified – Institutional body] ]*

[Canada: *ANNEX I(a)*]**Geographical indications of wines originating in the European Community**

Name	Territory, region or locality

*ANNEX I(b)***Geographical indications of spirits originating in the European Community**

Name	Territory, region or locality

*ANNEX I(c)***Geographical indications of wines originating in Canada**

Name	Territory, region or locality

*ANNEX I(d)***Geographical indications of spirits originating in Canada**

Name	Territory, region or locality

]

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**LIMITED**

## CHAPTER [X]

## COMPETITION POLICY, [CAN: MONOPOLIES AND STATE ENTERPRISES]

**Article X-01: Competition Policy**

[EU: The Parties recognise the importance of free and undistorted competition in their trade relations. The Parties acknowledge that anti-competitive business practices have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation].

1. [CAN: The Parties agree that anti-competitive business conduct can hinder the fulfilment of the objectives of this Agreement. Accordingly,] Each Party shall adopt or maintain measures to proscribe anti-competitive business conduct and take appropriate action with respect thereto, recognizing that such measures will enhance the fulfilment of the objectives of this Agreement. To this end, [EU: the Parties will cooperate in relation to their respective enforcement policies and in the enforcement of their respective competition laws in accordance with the provisions set out in the "Agreement between the European Communities and the Government of Canada Regarding the Application of their Competition Laws"] [CAN: the Parties shall consult from time to time about the effectiveness of measures undertaken by each Party].

2. [CAN: Each Party recognizes the importance of cooperation and coordination among their authorities to further effective competition law enforcement in the free trade area. The Parties shall cooperate on matters relating to the enforcement of competition laws and policies in the free trade area].

3. The measures each Party adopts or maintains to proscribe anti-competitive business conduct and the enforcement actions it takes pursuant to those measures shall be consistent with principles of transparency, non-discrimination and procedural fairness. [CAN: Exclusions from these measures shall be transparent. Each Party shall make available to the other Party public information concerning such exclusions provided under its competition laws]

4. [CAN: For purposes of this Article, “anti-competitive business conduct”  
 (a) includes anti-competitive agreements, concerted practices or arrangements by competitors; anti-competitive practices by an enterprise that is dominant in a market, and mergers with substantial anti-competitive effects; and  
 (b) excludes [deceptive marketing practices/fraudulent and deceptive commercial practices].

[CAN: Article X-02: Monopolies]

Discussions on separate chapters for competition policy and monopolies and state enterprises ongoing.

1. [CAN: Nothing in this Agreement shall be construed to prevent a Party from maintaining or designating a monopoly.
2. Where a Party intends to designate a monopoly and the designation may affect the interests of persons of another Party, the designating Party shall:
  - a) wherever possible, provide prior written notification to the other Party of the designation; and
  - b) endeavor to introduce at the time of the designation such conditions on the operation of the monopoly as will minimize or eliminate any nullification or impairment of benefits in the sense of Annex XX (Nullification and Impairment).
3. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any privately-owned monopoly that it designates and any government monopoly that it maintains or designates:
  - a) acts in a manner that is not inconsistent with the Party's obligations under this Agreement wherever such a monopoly exercises any regulatory, administrative or other governmental authority that the Party has delegated to it in connection with the monopoly good or service, such as the power to grant import or export licenses, approve commercial transactions or impose quotas, fees or other charges;
  - b) except to comply with any terms of its designation that are not inconsistent with subparagraph © or (d), acts solely in accordance with commercial considerations in its purchase or sale of the monopoly good or service in the relevant market, including with regard to price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale;
  - c) provides non-discriminatory treatment to covered investments, to goods and to service providers of another Party in its purchase or sale of the monopoly good or service in the relevant market; and
  - d) does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, its subsidiary or other enterprise with common ownership, in anticompetitive practices in a non-monopolized market in its territory that adversely affect a covered investment.
4. Paragraph 3 does not apply to procurement by governmental agencies of goods or services for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods or the provision of services for commercial sale.

#### **Article X-03: State Enterprises**

1. Nothing in this Agreement shall be construed to prevent a Party from maintaining or establishing a state enterprise.
2. Each Party shall ensure, through regulatory control, administrative supervision or the application of other measures, that any state enterprise that it maintains or establishes acts in a manner that is not inconsistent with the Party's obligations under Chapters XX (Investment) and XX (Financial Services) wherever such enterprise exercises any regulatory,



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administrative or other governmental authority that the Party has delegated to it, such as the power to expropriate, grant licenses, approve commercial transactions or impose quotas, fees or other charges.

3. Each Party shall ensure that any state enterprise that it maintains or establishes accords non-discriminatory treatment in the sale of its goods or services to covered investments].

**[EU: Article X-02 Public enterprises, monopolies and enterprises entrusted with special or exclusive rights**

Nothing in this title prevents a Party from designating or maintaining public enterprises, monopolies or entrusting enterprises with special or exclusive rights according to their respective laws.

Each Party shall ensure that such enterprises are subject to their respective competition laws referred to above, in so far as the application of these laws does not obstruct the performance, in law or in fact, of the particular tasks assigned to the enterprises in question.

The Parties shall also ensure that no discrimination is exercised by such enterprises regarding the conditions under which goods and services are procured from and marketed to the nationals or enterprises of the other Party]<sup>55</sup>.

### Article X-04: Dispute Settlement

**[EU: The wording of this Article will have to be adapted to make clear that competition policy and competition law enforcement action should not be subject to arbitration or mediation mechanisms, but only consultations between the parties.]**

**[CAN: 1.** A Party may have recourse to dispute settlement under Chapter XY (Dispute Settlement) for any matter arising under this Chapter except for those matters arising under Article X-1.

2. For the purposes of this Chapter, an investor may have recourse to investor-state dispute settlement pursuant to subparagraph X of Article X (Investment Chapter – Claim by an Investor of a Party on Its Own Behalf) or subparagraph X of Article X (Investment Chapter – Claim by an Investor of a Party on Behalf of an Enterprise) only for matters arising under sub-paragraph 3(a) of Article X-02 or paragraph 2 of Article X-03.]

**[EU: Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this title]**<sup>56</sup>.

### Article X-05: Definitions

For purposes of this Chapter:

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<sup>55</sup> For the purposes of this chapter, the EU proposes to replace draft Article 2 and 3 as proposed by CAN by its draft Article X-02.

<sup>56</sup> Wording will need to be adjusted.

[CAN: **covered investment** means “covered investment” as defined in Article X (Investment – Definitions);

**designate** means to establish, designate, authorize, or to expand the scope of a monopoly to cover an additional good or service, after the date of entry into force of this Agreement;

**government monopoly** means a monopoly that is owned, or controlled through ownership interests, by the federal government of a Party or by another such monopoly;

**in accordance with commercial considerations** means consistent with normal business practices of privately-held enterprises in the relevant business or industry;

**market** means the geographic and commercial market for a good or service;

**monopoly** means an entity, including a consortium or government agency, that in any relevant market in the territory of a Party is designated as the sole provider or purchaser of a good or service, but does not include an entity that has been granted an exclusive intellectual property right solely by reason of such grant;

**non-discriminatory treatment** means the better of national treatment and most-favored-nation treatment, as set out in the relevant provisions of this Agreement; and

**state enterprise** means, except as set out in Annex XY, an enterprise owned, or controlled through ownership interests, by a Party.

#### Annex YY

#### Country-Specific Definitions of State Enterprises

For purposes of Article X-03(3), "state enterprise":

with respect to Canada, means a Crown corporation within the meaning of the *Financial Administration Act* (Canada), a Crown corporation within the meaning of any comparable provincial law or equivalent entity that is incorporated under other applicable provincial law; ]

## CHAPTER [X]

### GENERAL EXCEPTIONS

#### Article X-1: Non-Disclosure Clause

X.1 Nothing in this Agreement shall be construed to require, during the course of any dispute settlement procedure under this Agreement, a Party to furnish or allow access to information protected under its competition laws, or a competition authority of a Party to furnish or allow access to any other information that is privileged or otherwise protected from disclosure.

**Annex**

In Article X.1,

"competition authority" means

- (a) for Canada, the Commissioner of Competition, or any successor; and
- (b) for the European Union, the European Commission as to its responsibilities pursuant to the competition laws of the European Union;

"information protected under its competition laws" means

- (a) for Canada, information within the scope of section 29 of the Competition Act, R.S. 1985, c.34, or any successor provision; and
- (b) for the European Union this means information within the scope of Article 28 of Council Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, or Article 17 of Council Regulation No 139/2004 on the control of concentrations between undertakings.

**CHAPTER [X]****EU TEXT****MONOPOLIES AND STATE ENTERPRISES**

[ PLACEHOLDER]

[As Annex/Sub-chapter: Provisions concerning trade and commerce in alcoholic beverages]

**CHAPTER [X]****EU TEXT****SUBSIDIES****CETA: Chapter on Subsidies****Article x1**

**Definition and scope**

For the purposes of this Agreement, a subsidy is a measure which fulfils [*mutatis mutandis*<sup>57</sup>] the conditions set out in Article 1.1 of the Agreement on Subsidies and Countervailing Measures (ASCM). Articles x 3 par. 2, x 4 and x 7 and the annex to this [Chapter] shall not apply to fisheries subsidies, subsidies related to products covered by Annex 1 of the WTO Agreement on Agriculture and other subsidies covered by the WTO Agreement on Agriculture.

**Article x2****Relationship with the WTO**

The provisions in this [Chapter] are without prejudice to the rights and obligations of a Party under the WTO Agreement, in particular to apply trade remedies or to engage in dispute settlement proceedings or other appropriate action against a subsidy granted by the other Party.

**Article x3****Prohibited subsidies**

1. The Parties affirm their rights and obligations under Article 3 of the ASCM, which is hereby incorporated into and made part of this Agreement. Article 3 of the ASCM shall be applied [*mutatis mutandis*<sup>58</sup>]<sup>59</sup> to cross-border trade in services within the meaning of Article 4(a) (i) of [Chapter X on services].
2. Furthermore, the following subsidies related to trade in goods and the supply of services shall also be prohibited:
  - (a) Any legal arrangement whereby a government or any public body is responsible to cover debts or liabilities of certain undertakings without any limitation, in law or in fact, as to the amount of those debts and liabilities or the duration of such responsibility;
  - (b) Support to insolvent or ailing undertakings in whatever form (such as loans and guarantees, cash grants, capital injections, provision of assets below market prices, tax exemptions) without a credible restructuring plan based on realistic assumptions with the view to ensuring the return of the ailing undertaking within a reasonable time to long-term viability and without the undertaking significantly contributing itself to the costs of restructuring<sup>60</sup>

unless the subsidizing Party upon request of the other Party has demonstrated that the subsidy in question does not affect trade of the other Party nor will be likely to do so.

<sup>57</sup> Note that legal drafting will be provided later.

<sup>58</sup> Note that legal drafting will be provided later.

<sup>59</sup> For the sake of clarity, subparagraph b) of Article 3 ASCM in this context shall also include subsidies contingent upon the use of domestic over imported services.

<sup>60</sup> This does not prevent the Parties from providing temporary liquidity support in the form of loan guarantees or loans limited to the amount needed to merely to keep an ailing firm in business for the time necessary to work out a restructuring or liquidation plan.

Subparagraphs a) and b) above do not prevent the Parties from providing subsidies that are granted to remedy a serious disturbance in the economy of one of the Parties.

Subparagraph b) above does not apply to subsidies granted as compensation for carrying out public service obligations and subsidies to the coal industry.

#### **Article x4 Other Subsidies**

1. The Parties agree to use their best endeavours to remedy or remove through the application of their competition laws or otherwise, distortions of competition caused by other subsidies, related to trade in goods and the supply of services which are not covered by Article 3 of this Chapter, in so far as they affect or are likely to affect trade of either Party, and to prevent the occurrence of such situations. Annex x ("Principles applicable to other subsidies") contains guidance in particular on the types of subsidies which do not produce these effects.<sup>61</sup>
2. The Parties agree to exchange information upon the request of either Party and to hold a first dialogue within two years after the entry into force of this Agreement with a view to developing rules applicable to other subsidies, taking into account developments at multilateral level.

#### **Article x5 Transparency**

1. Each Party shall ensure transparency in the area of subsidies related to trade in goods and the supply of services. To this end, each Party shall report every two years to the other Party on the legal basis, form, amount or budget and where possible the recipient of the subsidy granted by its government or any public body.
2. Such report is deemed to have been provided if the relevant information is made available by the Parties or on their behalf on a publicly accessible website, by 31 December of the subsequent calendar year.

#### **Article x6 Confidentiality**

When exchanging information under this [Chapter] the Parties shall take into account the limitations imposed by the requirements of professional and business secrecy.

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<sup>61</sup> Article x4 subparagraph 1 shall not be subject to Dispute Settlement under this Agreement.

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**Article x7**  
**Review clause**

The Parties shall keep under constant review the matters to which reference is made in this [Chapter]. Each Party may refer such matters to the [*Name of the relevant Committee*]. The Parties agree to review progress in implementing this [Chapter] every two years after the entry into force of this Agreement, unless both Parties agree otherwise.

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Annex x**Principles applicable to other subsidies**

1. In principle, other subsidies related to trade in goods and the supply of services, which are not covered by Article 3 of this Chapter, should not be granted by a Party when they affect, or are likely to affect, the trade of either Party.
2. Notwithstanding the principle reflected in paragraph 1 the following subsidies could be granted by a Party when they are necessary to achieve an objective of public interest; the amounts of the subsidy involved are limited to the minimum needed to achieve this objective and their effect on trade of the other Party is limited:
  - (a) subsidies having a social character, granted to individual consumers, provided that such subsidies are granted without discrimination related to the origin of the products concerned;
  - (b) subsidies to make good the damage caused by natural disasters or exceptional occurrences;
  - (c) subsidies to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
  - (d) subsidies to remedy a serious disturbance in the economy of one of the Parties;
  - (e) subsidies to facilitate the development of certain economic activities or of certain economic areas, where such aid does not affect conditions of trade of either Party and competition between the Parties<sup>62</sup>;
  - (f) subsidies to companies entrusted with the operation of clearly defined services of general economic interest, provided the subsidies are limited to the costs of providing such services;
  - (g) subsidies to promote culture and heritage conservation where these subsidies do not affect conditions of trade of either Party and competition between the Parties.

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<sup>62</sup> Note that this category may include but is not limited to, subsidies for clearly defined research, development and innovation purposes, subsidies for training or for the creation of employment, subsidies for environmental purposes, subsidies in favour of small and medium-sized companies, defined as companies employing less than 250 persons.

**CHAPTER [XX]****REGULATORY COOPERATION****Article X.1: Scope**

This Chapter applies to regulatory measures [, including the development and review thereof,]of the [CAN: Parties' governmental bodies] [EC: Government of Canada and the European Commission] that are covered by the TBT Agreement, [the SPS Agreement, ]the GATT 1994, [and the GATS, including Chapters [X,Y,Z] of this agreement,] [EC proposes to delete: and including the development and review of regulatory measures that may directly or indirectly] affect international trade or investment [EC text: including methodological aspects of the development of regulations].

**Article X.2: Principles**

1. The Parties affirm their rights and obligations relating to regulatory measures under the TBT, SPS, GATT 1994 and GATS Agreements [EC proposes to delete as unnecessary: , and this Agreement].
2. The Parties commit themselves to ensuring high levels of protection for human, animal and plant life or health, and the environment in accordance with the TBT, SPS, GATT 1994 and GATS Agreements.
3. Without prejudice to paragraphs 1 and 2, the Parties recognise the value of regulatory cooperation with their major trading partners [EC asks what is meant by: and global innovators] on regulatory issues both bilaterally and multilaterally. [EC Text: The Parties will, whenever possible, endeavour to approach regulatory cooperation in a way that is open to participation by other international trading partners.]
4. Without prejudice to the ability of either Party to carry out its regulatory, legislative and policy activities, the Parties commit themselves to further developing their regulatory cooperation in light of their mutual interest to (a) prevent and eliminate unnecessary barriers to trade and investment; (b) enhance the climate for competitiveness and innovation, including through pursuing regulatory compatibility, [CAN: recognition of equivalence,] and convergence to the extent appropriate [EC: and the adoption of regulatory techniques which are able to accommodate technological advances], and (c) promote transparent, efficient and effective regulatory processes that better support public policy objectives and fulfil the mandates of regulatory bodies, including through the promotion of information exchange and enhanced use of best practices.
5. [CAN Text: In this context, the Parties affirm their commitment to the Government of Canada – European Commission Framework on Regulatory Cooperation and Transparency (hereinafter “Framework”). The Parties shall endeavour to ensure its full



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application, and commit themselves to further develop their regulatory cooperation through the provisions of this Chapter.] [EC Text: The provisions of this Chapter replace the Government of Canada – European Commission Framework on Regulatory Cooperation and Transparency and shall govern all activities previously undertaken in the context of that framework.]

6. [EC Text: Regulatory cooperation shall take place on a voluntary basis. Neither Party shall be obliged to enter into cooperation, nor shall any refusal to cooperate nor any withdrawal from cooperation be subject to the dispute settlement procedures of Chapter XX.]

### [EC proposes to delete CAN Article X.3: Relationship with the Framework

The Framework will remain an instrument separate from this Agreement. The provisions of this Chapter are intended to supplement the Framework].

### [EC Article X.3 Objectives of Regulatory Cooperation

The objectives of regulatory co-operation include:

#### **A. *Regulatory Governance***

to achieve a better understanding of each side's regulatory systems and obtain from each other the benefit of expertise and perspective for enhancing the efficacy of regulations, identifying alternative instruments, recognizing the associated impacts of regulations, and to deepen mutual understanding of regulatory implementation and compliance.

#### **B. *Good regulatory practice to create better regulations***

to advance bilateral co-operation between regulators and policy makers in order to promote transparency and predictability in the development and establishment of regulations, improve the planning and development of regulatory proposals, avoid unnecessary regulatory differences, and minimize administrative costs.

#### **C. *Facilitate trade and investment***

to facilitate bilateral trade and investment by building on [EC: previously]existing co-operative arrangements, reducing unnecessary differences in regulation, and identifying new appropriate modalities for co-operation in specific sectors.

#### **D. *Promote competitiveness and enhance the climate for innovation***

to contribute to the improvement of competitiveness and efficiency of industry by reducing duplicative regulatory requirements and pursuing compatible regulatory initiatives [including the application of regulatory approaches which are technology-neutral] where possible while ensuring a high level of protection to citizens and the environment.

**Article X.4: Compatibility of Regulations**

1. The cooperation between the Parties envisaged in this Chapter is intended to encourage activities aimed at improving compatibility, [reducing compliance costs,] recognition of equivalence and convergence to the extent appropriate between the respective regulatory measures of the Parties.
2. The Parties shall engage in dialogue and cooperation on issues regarding the development, adoption, implementation and maintenance of international standards, guides and recommendations, in accordance with Article 1 of this Chapter [EC text: subject to the principle expressed in paragraph 6 of Article 2 of this Chapter].
3. When developing or reviewing regulatory measures, the Parties shall consider the regulatory measures or initiatives of the other Party on the same or related topics with a view to enhancing convergence and compatibility between their respective regulatory measures, where appropriate. In accordance with Article 1, such consideration shall not in any way prevent either Party from adopting differing measures or pursuing differing approaches for reasons including different institutional and legislative approaches, or circumstances, values or priorities particular to that Party. [EC proposes to delete: When differing measures are proposed, either Party may request and shall receive a written explanation from the other Party regarding the rationale for the differing measure.]

**[CAN Text Article X.5: Role and Composition of the Regulatory Cooperation Committee**

1. In addition to the functions set out in the Framework, the Regulatory Cooperation Committee (hereinafter “the RCC”), created under Paragraph 23 of the Framework, shall oversee and review the implementation of this Chapter.
2. Specifically, the RCC shall perform the following functions:
  - (a) Provide a forum for discussion of regulatory issues of mutual interest identified by the Parties through, inter alia, any consultations conducted in accordance with Article X.7;
  - (b) Review new and upcoming regulatory initiatives, and anticipated regulatory proposals that may be of interest to a Party; such reviews should support the implementation of, inter alia, paragraphs 8 through 13 of the Framework;
  - (c) Develop an annual work-plan, or “Roadmap” of priority regulatory cooperation initiatives, that identifies specific targets for action, as well as a list of suggested priority areas for future regulatory cooperation for consideration by the regulatory departments and agencies of each Party;
  - (d) Review annually the work plans in respect of priority areas previously identified by the RCC where regulatory cooperation activities have been undertaken;
  - (e) Review reports from relevant regulatory departments and agencies of each Party that summarize the regulatory cooperation activities undertaken between

the Parties since the previous meeting of the RCC. Such reports shall include an indication of progress where regulatory cooperation activities have been undertaken in priority areas previously identified by the RCC;

- (f) Produce and make publicly available a report no later than six months following each meeting summarizing regulatory cooperation activities undertaken by the Parties since the previous meeting of the RCC, as well as the updated “Roadmap.” The reporting shall review previously suggested subject areas where regulatory cooperation activities have been undertaken, and the progress made in those areas. This report is intended to increase the transparency and accountability of the regulatory cooperation process to: (i) encourage activity and progress (ii) highlight successes, and (iii) make recommendations to regulators to improve cooperation; and,
  - (g) Report to the [CETA’s Trade Council] on implementation of this Chapter as appropriate.<sup>63</sup>
4. The RCC shall be co-chaired by the Government of Canada and the European Commission, shall be comprised of trade and relevant regulatory officials of each Party, at a level and by means deemed appropriate by each Party, and shall meet at least annually. Other parties may be invited to participate in meetings of the RCC with the agreement of both Parties.]

#### **[EC Text Article X.5: To be determined**

The EC does not wish to define a separate committee structure for regulatory cooperation at this stage but prefers to examine this issue within the overall supervision structure to exploit potential efficiencies which may be gained by creating a committee which addresses multiple aspects of the Agreement. The EC further considers that the rules of procedure should as far as possible be left to committee structures to adopt for themselves.

Notwithstanding the above, the EC agrees that a forum for the discussion describe in subparagraph (a) above is desirable.]

#### **Article X.6: Further Cooperation of Parties**

1. The Parties agree to explore mechanisms in the future to address issues such as plant, animal and food-related human health issues that are outside the scope of the Canada-EC Agreement on Sanitary Measures to protect Public and Animal Health in respect of Trade in Live Animals and Animal Products.
2. Pursuant to Article X.5.2(c) and to enable monitoring of forthcoming regulatory projects, the Parties shall:
  - (a) Periodically exchange information of ongoing or planned regulatory projects in their areas of responsibility. Such information should include, where appropriate, new technical regulations, and the amendments to existing technical regulations that are likely to be proposed or adopted[EC proposes to delete:; and]

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63 Drafter’s note: The intent of this reference is to refer to the governing body established for the CETA.

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[EC proposes to delete: (b) Upon request by either Party concerning a specific proposal, supplement the information referred to in Article X.6.2(a) with information regarding regulatory approaches under consideration, and the potential benefits, costs and other impacts, both domestic and non-domestic, where known and available. ]

3. The Parties may facilitate regulatory cooperation through the exchange of officials pursuant to a specified arrangement.
4. [EC proposes to delete: Where a regulatory department or agency does not initiate regulatory cooperation pursuant to Article X.5.2(c), a Party may request of the other Party an explanation for refusing to engage in this proposed cooperation initiative.]

### **Article X.7: Further Cooperation of [Regulatory Departments and Agencies]**

Regulatory departments and agencies may develop initiatives pursuant to Article X.5.2 (c) that include, the conduct of concurrent or joint risk assessment and regulatory impact assessments.

### **Article X.8: Consultations with Private Entities**

In order to gain non-governmental perspectives, the Parties may [EC text: jointly] consult with stakeholders and interested parties, including representatives from academia, think-tanks, non-governmental organizations, business, consumer and other organizations by any means they deem appropriate on matters relating to the implementation of this Chapter.

## CHAPTER [X] TRANSPARENCY

### Section A- Publication, Notification and Administration of Laws

#### Article X.01: Publication

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or made available in such a manner as to enable interested persons and the other Party to become acquainted with them.
2. To the extent possible, each Party shall:
  - (a) [EC: endeavour to] publish in advance any such measure that it proposes to adopt; and
  - (b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures.

#### Article X.02: Notification and Provision of Information

1. [To the extent possible, each Party shall notify the other Party of any existing or proposed measure that the Party considers might materially affect the operation of this Agreement or substantially affect the other Party's interests under this Agreement.] [EC comment: this may create a lot of notifications – to be considered in light of other notification rules in other chapters]

2. On request of the other Party, a Party shall promptly provide information and respond to questions pertaining to any existing or proposed measure, whether the other Party has been previously notified of that measure.

3. A notification or information provided under this Article is without prejudice for the purposes of determining whether the measure is consistent with this Agreement.

#### **Article X.03: Administrative Proceedings**

In order to administer a measure of general application affecting matters covered by this Agreement, in a consistent, impartial and reasonable manner, each Party shall ensure that in its administrative proceedings applying measures referred to in Article X.01 (Publication) to particular persons, goods or services of the other Party in specific cases:

- (a) whenever possible, a person of the other Party who is directly affected by a proceeding is given reasonable notice, in accordance with domestic procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of the issues in controversy;
- (b) a person referred to in subparagraph (a) is afforded a reasonable opportunity to present facts and arguments in support of its position prior to any final administrative action, when permitted by time, the nature of the proceeding, and the public interest; and,
- (c) its procedures are in accordance with its domestic law.

#### **Article X.04: Review and Appeal**

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Agreement. Each Party shall ensure that its tribunals are impartial and independent of the office or authority entrusted with

administrative enforcement and that they do not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in its tribunals or procedures, the parties to the proceeding are provided with the right to:

- (a) a reasonable opportunity to support or defend their respective positions; and
- (b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decisions are implemented by, and govern the practice of, the offices or authorities with respect to the administrative action at issue.

#### **Article X.05: Cooperation on Promoting Increased Transparency**

The Parties agree to cooperate in bilateral, regional and multilateral fora on ways to promote transparency in respect of international trade and investment.

#### **Article X-6: Definitions**

For purposes of this Section:

**administrative ruling of general application** means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

- (a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or

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- (b) a ruling that adjudicates with respect to a particular act or practice.

### **Section B- Anti-Corruption**

[Language on Anti-Corruption will be provided by Canada at a later date.]

LIMITED



## Sustainable Development (Labour, Environment)

### EU TEXT

#### CHAPTER X: COMMON PROVISIONS TO CHAPTERS X+1 AND X+2

##### Article 1: Context and objectives

1. Recalling the Rio Declaration on Environment and Development of 1992, the Agenda 21 on Environment and Development, the Johannesburg Declaration and Plan of Implementation of 2002 on Sustainable Development, the 2006 Ministerial declaration of the UN Economic and Social Council on Full Employment and Decent Work, and the 2008 ILO Declaration on Social Justice for a Fair Globalisation, the Parties recognise that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, and they reaffirm their commitment to promoting the development of international trade in such a way as to contribute to the objective of sustainable development, for the welfare of present and future generations. In particular, the Parties underline the benefit of considering trade related labour and environmental issues as part of a global approach to trade and sustainable development, and will strive to ensure that sustainable development objectives are integrated and reflected at every level of their trade relationship.
2. In this regard, through the implementation of Chapters X+1 and X+2, the Parties aim to:
  - a. promote sustainable development through an enhanced coordination and integration of labour, environmental and trade policies and measures;
  - b. promote dialogue and cooperation between the Parties with a view to developing and improving their trade and economic relations in a manner supportive of labour and environmental protection measures and standards;
  - c. enhance compliance with, and enforcement of, labour and environmental multilateral agreements and domestic laws;
  - d. make full use of instruments for better regulation of trade, labour and environmental issues, such as impact assessment and stakeholder consultations, and encourage businesses, civil society organisations and citizens to develop and implement practices that contribute to the achievement of sustainable development goals;
  - e. promote public consultation and participation in the discussion of sustainable development issues arising under this Agreement and in the development of relevant domestic laws and policies.

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**Article 2: Transparency**

Each Party, in accordance with its domestic laws, shall ensure that any measures of general application pursuing sustainable development goals, particularly measures to protect the environment or labour conditions, which are relevant to the Parties' trade and economic relations, are developed, introduced and implemented in a transparent manner. To this end, each Party shall:

- a. encourage public debate with and among non-State actors as regards the development and definition of priorities that may lead to the adoption by public authorities of such measures or of non-binding recommendations or guidance;
- b. except in urgent circumstances, and to the greatest extent possible, allow for the possibility for stakeholders, including non-State actors, to submit their views prior to the adoption of such measures, with sufficient time for comments to be made and to be taken into account;
- c. promptly publish such measures in order to enable interested persons to become acquainted with them.

**Article 3: Co-operation and promotion of trade supporting sustainable development**

1. The Parties recognise the value of international cooperation to achieve the goal of sustainable development and the integration at the international level of economic, social and environmental development and protection initiatives, actions and measures. Therefore, in the context of this Agreement, they agree to dialogue and consult with each other with regard to trade-related sustainable development issues of common interest.
2. The Parties confirm that trade should promote sustainable development. Accordingly, in the respect of their respective legislative frameworks, each Party shall strive to promote trade and economic flows and practices that contribute to enhancing decent work and environmental protection, in particular by:
  - a. Encouraging trade in products under criteria of environmental, social and economic sustainability, including products that are the subject of schemes such as Fair and Ethical Trade schemes;
  - b. Encouraging voluntary best practices of corporate social responsibility by enterprises within their territories, to strengthen coherence between economic, social and environmental objectives.

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3. The Parties recognise the importance of identifying the best options to address specific sustainable development issues, on the basis of a balanced assessment of the likely economic, social and environmental impacts of possible actions, taking account of the views of stakeholders. In this light, with a view to identifying any needs that may arise for accompanying measures or for joint actions under this Agreement, the Parties commit to reviewing, monitoring and assessing the impact of the implementation of this Agreement on sustainable development, including the promotion of decent work, through their respective participative processes and institutions, as well as those set up under this Agreement, for instance through trade-related sustainability impact assessments.

### [ Article 4: Board on Trade and Sustainable Development<sup>64</sup>

1. A Board on Trade and Sustainable Development is established.
2. The Board shall comprise senior officials from within the administrations of the Parties responsible for labour, environmental and trade matters.
3. The Board shall meet within the first year of the entry into force of this Agreement, and thereafter as necessary, to oversee the implementation of the sustainable development provisions of the Agreement and to discuss matters of common interest.
4. The Board shall report on its activities to [...].
5. The Board shall promote transparency and public participation in its work. Accordingly, all decisions and reports that the Board may adopt shall be made public, unless the Board decides otherwise. Furthermore, the Board shall be open to receive and consider input, comments or views from the public on matters related to trade and sustainable development under this Agreement.]

### Article 5: Civil society forum<sup>65</sup>

1. The Parties will facilitate meetings of civil society organisations at a Civil Society Forum in order to conduct a dialogue encompassing sustainable development aspects of trade relations between the Parties.
2. The Civil Society Forum shall be convened once a year unless otherwise agreed by the Parties. The Parties will promote a balanced representation of relevant interests, including independent representative organisations of employers, workers, environmental interests and business groups, local communities, as well as other relevant stakeholders as appropriate.
3. The Parties shall agree by decision of [the Board on Trade and Sustainable Development] on the operation of the Civil Society Forum no later than one year after the entry into force of this Agreement.

<sup>64</sup> Negotiator's note: Without prejudice to horizontal discussions on the institutional mechanisms and structures under CETA.

<sup>65</sup> Negotiator's note: Without prejudice to horizontal discussions on the institutional mechanisms and structures under CETA.

**Article 6: Definitions**

For the purposes of this Chapter and Chapters X+1 and X+2:

- a. "Labour" includes the issues relevant to the strategic objectives of the International Labour Organisation.
- b. "Environment" includes terrestrial and marine ecosystems, atmospheric conditions and climate change issues.

**CHAPTER X+1: TRADE AND LABOUR****Article 1: Right to regulate and levels of protection**

Recognising the right of each Party to set its labour development priorities, to establish its levels of labour protection, compatible with its international commitments as set out in Article 2, and to adopt or modify its relevant laws and policies, each Party shall seek to ensure that those laws and policies provide for and encourage high levels of labour protection and shall strive to continue to improve those laws and policies and their underlying levels of protection.

**Article 2: Multilateral labour standards and agreements**

1. The Parties recognise the value of international co-operation and agreements on employment and labour affairs as a response of the international community to economic, employment and social challenges and opportunities resulting from globalisation. They reaffirm their commitments to promote the development of international trade in a way that is conducive to full and productive employment and decent work for all, and commit to consulting and co-operating as appropriate on trade-related labour and employment issues of mutual interest.
2. The Parties, in accordance with their obligations as members of the ILO and the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*, adopted by the International Labour Conference at its 86th Session in 1998, commit to respecting, promoting and realising the fundamental rights at work:
  - (a) freedom of association and the effective recognition of the right to collective bargaining;
  - (b) the elimination of all forms of forced or compulsory labour;
  - (c) the effective abolition of child labour; and
  - (d) the elimination of discrimination in respect of employment and occupation.

Accordingly, each Party shall ratify, to the extent that it has not yet done so, and shall effectively implement in its laws and practices, in its whole territory, the Fundamental ILO Conventions:

- Convention 138 concerning Minimum Age for Admission to Employment,
- Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,
- Convention 105 concerning the Abolition of Forced Labour,
- Convention 29 concerning Forced or Compulsory Labour,
- Convention 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value,
- Convention 111 concerning Discrimination in Respect of Employment and Occupation,

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- Convention 87 concerning Freedom of Association and Protection of the Right to Organise,
  - Convention 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively.
3. The Parties reaffirm their commitments to effectively implementing the ILO Conventions that they have ratified. The Parties will regularly exchange information on their respective situation and advancements as regards the ratification of priority ILO conventions as well as other conventions that are classified as up-to-date by the ILO.

### **Article 3: Upholding levels of protection**

1. The Parties recognise that it is inappropriate to encourage trade or foreign direct investment by lowering the levels of protection embodied in domestic labour laws and standards.
2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour laws or standards, in a manner affecting trade between the Parties or as an encouragement for the establishment, acquisition, expansion or retention of an investment or an investor in its territory.
3. A Party shall not fail to effectively enforce its labour laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties or foreign direct investment.

### **Article 4: Enforcement procedures. Administrative proceedings and review of administrative action**

1. Each Party shall ensure that enforcement procedures are available under its law so as to permit effective action against infringements of its labour laws, including appropriate remedies for violations of such laws.
2. With a view to administering in a consistent, impartial and reasonable manner measures of general application related to the implementation of this Chapter, each Party shall, in accordance with its laws and procedures:
  - a. Provide defendants with reasonable notice, in accordance with its procedures, when a proceeding is initiated, including a description of the nature of the proceeding and the basis of the claims.
  - b. Afford the parties to the proceedings a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action.
3. Each Party shall ensure that procedures are available under its law for the purposes of the review and, where warranted, correction of administrative action relating to matters covered by this Chapter. In particular, each Party shall ensure that parties to a proceeding have an opportunity for review by a tribunal established by law of final administrative decisions. Decision-makers in review procedures shall be impartial and

independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

4. Each Party shall implement this Article in conformity with relevant international instruments binding on it. Nothing in the above paragraphs shall be construed to prevent any Party from adopting or maintaining any measure pursuant to international treaties on justice or human rights.

#### **Article 5: Trade favouring labour development and protection**

1. The Parties recognise the beneficial role that core labour standards and decent work can have on economic efficiency, innovation and productivity, including export performance, and they highlight the value of greater policy coherence in those areas.
2. The Parties agree to encourage voluntary best practices and initiatives, including codes of conduct, social labelling and certification schemes operating under criteria of transparency and social partners' involvement, and comprising appropriate mechanisms for evaluation and verification of their implementation, and to promote and facilitate international stakeholder initiatives for the convergence of such instruments.

#### **Article 6: Scientific and technical information**

Each Party shall, when preparing and implementing measures aimed at health and safety at work which may affect trade between the Parties or foreign direct investment, take account of relevant scientific and technical information and related international standards, guidelines or recommendations if they exist, and of the precautionary principle. Where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing protective measures.

#### **Article 7: Cooperation on labour issues**

The Parties commit to cooperate on trade-related labour and employment issues of common interest, through actions and instruments such as:

- (a) exchange of views on the positive and negative impacts of this Agreement on labour and employment and ways to enhance, prevent or mitigate them, taking into account impact assessments carried out by the Parties;
- (b) cooperation on aspects of the ILO Decent Work Agenda relevant for the interlinkages between trade and economic relations and full and productive employment, labour market adjustment, core labour standards, labour statistics, human resources development and life-long learning, social protection and social inclusion, social dialogue and gender equality;
- (c) cooperation with a view to promoting the ratification by third countries of fundamental ILO Conventions;



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(d) cooperation in international fora dealing with issues relevant for both trade and labour and employment policies, including in particular the WTO and the ILO;

(e) exchange of information and cooperation on the labour dimension of corporate social responsibility and accountability, including on the implementation and follow-up of internationally agreed guidelines, Fair and Ethical trade, private and public certification and labelling schemes;

(f) other forms of cooperation in the field of labour as the Parties may deem appropriate.

### [Article 8: Institutional mechanisms<sup>66</sup>

2. Each Party shall designate an office within its administration which shall serve as a contact point with the other Party for the purposes of implementing this Chapter.
3. The Board of Trade and Sustainable Development established pursuant to Article 4 of Chapter X [Common provisions to Chapters X+1 and X+2: Trade and Sustainable Development] may meet in a labour formation when the Parties so decide in order to address specific trade and labour matters.
4. Each Party shall consult a domestic labour or sustainable development advisory group(s), or establish new ones when they do not exist, to provide views and advice on any issues relating to this Chapter. Such groups may submit opinions and make recommendations on any matter related to this Chapter on their own initiative. The domestic advisory group(s) comprise(s) independent representative organisations of civil society in a balanced representation of employers, unions, labour and business organisations, as well as other relevant stakeholders as appropriate.
5. The Parties shall present an update on the implementation of this Chapter to the Civil Society Forum referred to in Article 4 of Chapter X [Common provisions to Chapters X+1 and X+2: Trade and Sustainable Development]. The views, opinions or findings of the Civil Society Forum can be submitted to the Parties directly, or through the domestic advisory group(s). The Board shall report annually on the follow-up given to such communications.]

### Article 9: Government consultations<sup>67</sup>

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point of the other Party. The request shall present the matter clearly, identifying the questions at issue and providing a brief summary of any claims under this Chapter. Consultations shall commence promptly after a Party delivers a request for consultations.

<sup>66</sup> Negotiator's note: Without prejudice to horizontal discussions on the institutional mechanisms and structures under CETA.

<sup>67</sup> Negotiator's note: Without prejudice to horizontal discussions on the institutional mechanisms and structures under CETA.

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2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.
3. The Parties shall take into account the activities of the International Labour Organisation so as to promote greater cooperation and coherence between the work of the Parties and these organisations. In matters related to the respect of multilateral agreements as set out in Article 2, the Parties shall seek advice from the ILO, and they shall rely on any pertinent available interpretative guidance, findings or decisions adopted by the ILO.
4. If a Party considers that the matter needs further discussion, that Party may request that [the Board on Trade and Sustainable Development] be convened to consider the matter by delivering a written request to the contact point of the other Party. [The Board] shall convene promptly and endeavour to agree on a resolution of the matter. Where appropriate, it shall seek the advice of the Parties' domestic advisory group(s).
5. Any solutions or decisions on matters discussed under this Article shall be made publicly available.

### **Article 10: Panel of Experts<sup>68</sup>**

1. The provisions in Section 3, Sub-Section 1 [Dispute Settlement Procedures] of Chapter 14 [Dispute Settlement], as well as the Rules of Procedure in Annex X and the Code of Conduct in Annex Y, shall apply, except as otherwise provided in this Article.
2. A Party may, 90 days after the delivery of a request for consultations under Article 9.1, request that a Panel of Experts be convened to examine a matter that has not been satisfactorily addressed through government consultations.
3. At the entry into force of this Agreement, the Parties shall submit to the [Joint Body] a list of at least 15 persons who are willing and able to serve as experts in Panel procedures, for endorsement at the [Joint Body]'s first meeting. Each Party shall propose five individuals to serve as experts. The Parties shall also select five individuals who are not nationals of either Party and who shall act as chairperson to the Panel of experts. The [Joint Body] will ensure that the list is always maintained at this level.
4. The list referred to in paragraph 3 shall comprise individuals with specialised knowledge or expertise in law, labour issues addressed in this Chapter, or the resolution of disputes arising under international agreements. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to issues related to the matter at stake, or be affiliated with the government of any Party, and shall comply with [the Code of Good Conduct].

<sup>68</sup> Negotiator's note: Subject to verification of consistency with the Dispute Settlement Chapter as negotiations on of the different CETA chapters progress.

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*Draft consolidated CETA text as at 13.1.10*

5. For matters arising under this Chapter, the Panel of Experts shall be composed of experts from the list referred to in paragraph 3, in accordance with the relevant provisions of Section 3, Sub-Section 1 [Dispute Settlement Procedures] of Chapter 14 [Dispute Settlement].
6. In matters related to the respect of multilateral agreements as set out in Article 2, the Panel shall seek advice from the ILO, and it shall rely on any pertinent available interpretative guidance, findings or decisions adopted by the ILO.
7. The Panel of Experts shall issue to the Parties a report setting out the findings of facts, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations that it makes. The Parties shall make the report publicly available from the fifteenth day of its issuance.
8. The Panel's report and recommendations shall not be binding on the Parties. The Parties shall endeavour to discuss appropriate measures to be implemented taking into account the Panel's report and recommendations. The Party concerned shall inform its advisory groups and the other Party of its decisions on any actions or measures to be implemented no later than three months after the public release of the report. The follow-up to the report and the recommendations of the Panel of Experts shall be monitored by the Board on Trade and Sustainable Development. The advisory bodies and the Civil Society Forum may submit observations to the Board on Trade and Sustainable Development in this regard.
9. [For greater certainty, a Party's decision not to follow or to depart from the Panel's report and recommendations shall not trigger the imposition of any economic penalties by the other Party.]

### **Article 11: Definitions**

For purposes of this Chapter:

"labour laws" means laws, regulations, administrative practices and all other measures directly applicable in the Parties' respective territories, the purpose of which relates to the following issues:

- b. The Fundamental Rights at Work, as contained and developed in the ILO Fundamental Conventions;
- c. Right to Strike;
- d. Tripartite consultation;
- e. Labour inspection;
- f. Employment security, including termination of employment;
- g. Conditions of work, including wages, working time, leave, and maternity protection;
- h. Occupational health and safety.

**CHAPTER X+2: TRADE AND ENVIRONMENT****Article 1: Right to regulate and levels of protection**

Recognising the right of each Party to set its environmental priorities, to establish its levels of environmental protection, compatible with its international commitments as set out in Article 2, and to adopt or modify its relevant laws and policies, each Party shall seek to ensure that those laws and policies provide for and encourage high levels of environmental protection and shall strive to continue to improve those laws and policies and their underlying levels of protection.

**Article 2: Multilateral Environmental Agreements**

1. The Parties recognise the value of international environmental governance and agreements as a response of the international community to global or regional environmental problems and stress the need to enhance the mutual supportiveness between trade and environment policies, rules and measures. In this context, the Parties commit to consulting and co-operating as appropriate with respect to negotiations on trade-related environmental issues and other trade-related environmental matters of mutual interest.
2. The Parties shall effectively implement in their respective laws and practices, in their whole territories, the multilateral environmental agreements to which they are parties<sup>69</sup>.
3. The Parties will regularly exchange information on their respective situation and advancements as regards additional ratifications of Multilateral Environmental Agreements or amendments to such Agreements.
4. Nothing in this Agreement shall prevent Parties from adopting or maintaining measures to implement the Multilateral Environmental Agreements to which they are party provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between the Parties or a disguised restriction on trade.

**Article 3: Upholding levels of protection**

1. The Parties recognise that it is inappropriate to encourage trade or foreign direct investment by lowering the levels of protection embodied in domestic environmental laws [and standards].
2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws, regulations [or standards], in a manner affecting trade between the Parties or as an encouragement for the establishment, acquisition, expansion or retention of an investment or an investor in its territory.

<sup>69</sup> For the purposes of article 1.2, the multilateral environmental agreements referred to shall encompass those protocols, amendments, annexes and adjustments binding on the Parties.

3. A Party shall not fail to effectively enforce its environmental laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties or foreign direct investment.

**Article 4: Enforcement procedures. Administrative proceedings and review of administrative action**

- (b) Each Party shall ensure that enforcement procedures are available under its law so as to permit effective action against infringements of its environmental laws, including appropriate remedies for violations of such laws.
- (c) With a view to administering in a consistent, impartial and reasonable manner measures of general application related to the implementation of this Chapter, each Party shall, in accordance with its laws and procedures:
  - a. Provide defendants with reasonable notice, in accordance with its procedures, when a proceeding is initiated, including a description of the nature of the proceeding and the basis of the claims.
  - b. Afford the parties to the proceedings a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action.
- (d) Each Party shall ensure that procedures are available under its law for the purposes of the review and, where warranted, correction of administrative action relating to matters covered by this Chapter. In particular, each Party shall ensure that parties to a proceeding have an opportunity for review by a tribunal established by law of final administrative decisions. Decision-makers in review procedures shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.
- (e) Each Party shall implement this Article in conformity with relevant international instruments binding on it. Nothing in the above paragraphs shall be construed to prevent any Party from adopting or maintaining any measure pursuant to international treaties on justice or human rights.

**Article 5: Trade favouring environment protection**

1. The Parties are resolved to make continuing special efforts to facilitate and promote trade and foreign direct investment in environmental goods and services, as well as eco-labelled goods, including through addressing related non-tariff barriers.
2. The Parties shall pay special attention to facilitating the removal of obstacles to trade or foreign direct investment concerning goods and services of particular relevance for climate change mitigation, in particular renewable energy goods and related services, including through the adoption of policy frameworks conducive to the deployment of best available technologies and through the promotion of standards that respond to environmental and economic needs and minimise technical obstacles to trade.

**Article 6: Trade in forestry products**

*This provision (still in preparation) will focus on the promotion of sustainable forest management through trade measures, particularly to tackle illegal logging.*

**Article 7: Trade in fisheries products**

The Parties recognise the importance of ensuring the conservation and management of fish stocks in a sustainable and responsible manner in order to guarantee their sustainability. To this end, the Parties undertake to work together to:

- (a) Conserve fish stocks by adopting effective monitoring and control measures to ensure full compliance with applicable conservation measures, such as observer schemes, vessel monitoring schemes, transshipment control, inspections at sea and port state control.
- (b) Adopt actions and cooperate to combat illegal, unreported and unregulated (IUU) fishing. In this context, the Parties shall facilitate the exchange of information on any IUU activities in their waters and implement policies and measures to exclude IUU products from trade flows.
- (c) Cooperate with and within Regional Fisheries Management Organisations as widely as possible with the aim of achieving good governance.
- (d) Improve the efficiency of their markets, in particular by providing information to consumers and promoting traceability.

**Article 8: Scientific and technical information**

Each Party shall, when preparing and implementing measures aimed at environmental protection which may affect trade between the Parties or foreign direct investment, take account of relevant scientific and technical information and related international standards, guidelines or recommendations if they exist, and of the precautionary principle. Where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing protective measures.

**Article 9: Cooperation on environment issues**

The Parties commit to cooperate on trade-related environmental issues of common interest, through actions and instruments such as:

- (a) exchange of views on the positive and negative impacts of this Agreement on the environment and ways to enhance, prevent or mitigate them, taking into account impact assessments carried out by the Parties;

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(b)cooperation in international fora dealing with issues relevant for both trade and environmental policies, including in particular the WTO, the United Nations Environment Programme and multilateral environmental agreements;

(c)cooperation with a view to promoting the ratification of multilateral environmental agreements with a relevance for trade;

(d)exchange of information and cooperation on the environmental dimension of corporate social responsibility and accountability, including on the implementation and follow-up of internationally agreed guidelines, Fair and Ethical trade, private and public certification and labelling schemes including eco-labelling and green public procurement;

(e)exchange of views on the trade impact of environmental regulations, norms and standards;

(f)cooperation on trade-related aspects of the current and future international climate change regime, including issues relating to global carbon markets, ways to address adverse effects of trade on climate, as well as means to promote low-carbon technologies and energy efficiency;

(g)cooperation on trade-related aspects of the protection and conservation of biological diversity;

(h)cooperation on measures to promote sustainable fishing practices and trade in sustainably managed fish products;

(i)cooperation on trade-related measures to tackle deforestation including by addressing problems regarding illegal logging;

(j)exchange of views on the relationship between multilateral environmental agreements and international trade rules; or

(k)other forms of environmental cooperation as the Parties may deem appropriate.

### [Article 10: Institutional mechanisms]<sup>70</sup>

1. Each Party shall designate an office within its administration which shall serve as a contact point with the other Party for the purposes of implementing this Chapter.
2. The Board of Trade and Sustainable Development established pursuant to Article 4 of Chapter X [Common provisions to Chapters X+1 and X+2: Trade and Sustainable Development] may meet in an environment formation when the Parties so decide in order to address specific trade and environment matters.
3. Each Party shall consult a domestic labour or sustainable development advisory group(s), or establish new ones when they do not exist, to provide views and advice on

<sup>70</sup> Negotiator's note: Without prejudice to horizontal discussions on the institutional mechanisms and structures under CETA.

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any issues relating to this Chapter. Such groups may submit opinions and make recommendations on any matter related to this Chapter on their own initiative. The domestic advisory group(s) comprise(s) independent representative organisations of civil society in a balanced representation of environmental groups, business organisations, as well as other relevant stakeholders as appropriate.

4. The Parties shall present an update on the implementation of this Chapter to the Civil Society Forum referred to in Article 4 of Chapter X [Common provisions to Chapters X+1 and X+2: Trade and Sustainable Development]. The views, opinions or findings of the Civil Society Forum can be submitted to the Parties directly, or through the domestic advisory group(s). The Board shall report annually on the follow-up given to such communications.]

### **Article 11: Government consultations<sup>71</sup>**

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the contact point of the other Party. The request shall present the matter clearly, identifying the questions at issue and providing a brief summary of any claims under this Chapter. Consultations shall commence promptly after a Party delivers a request for consultations.
2. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.
3. The Parties shall take into account the activities of relevant multilateral environmental organisations or bodies so as to promote greater cooperation and coherence between the work of the Parties and these organisations. In matters related to the respect of multilateral agreements as set out in Article 2, the Parties shall seek advice from the relevant MEAs bodies, and they shall rely on any pertinent available interpretative guidance, findings or decisions adopted under those MEAs.
4. If a Party considers that the matter needs further discussion, that Party may request that [the Board on Trade and Sustainable Development] be convened to consider the matter by delivering a written request to the contact point of the other Party. [The Board] shall convene promptly and endeavour to agree on a resolution of the matter. Where appropriate, it shall seek the advice of the Parties' domestic advisory group(s).
5. Any solutions or decisions on matters discussed under this Article shall be made publicly available.

### **Article 12: Panel of Experts<sup>72</sup>**

1. The provisions in Section 3, Sub-Section 1 [Dispute Settlement Procedures] of Chapter 14 [Dispute Settlement], as well as the Rules of Procedure in Annex X and

<sup>71</sup> Negotiator's note: Without prejudice to horizontal discussions on the institutional mechanisms and structures under CETA.

<sup>72</sup> Negotiator's note: Subject to verification of consistency with the Dispute Settlement Chapter as negotiations on of the different CETA chapters progress.



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the Code of Conduct in Annex Y, shall apply, except as otherwise provided in this Article.

2. A Party may, 90 days after the delivery of a request for consultations under Article 9.1, request that a Panel of Experts be convened to examine a matter that has not been satisfactorily addressed through government consultations.
3. At the entry into force of this Agreement, the Parties shall submit to the [Joint Body] a list of at least 15 persons who are willing and able to serve as experts in Panel procedures, for endorsement at the [Joint Body]'s first meeting. Each Party shall propose five individuals to serve as experts. The Parties shall also select five individuals who are not nationals of either Party and who shall act as chairperson to the Panel of experts. The [Joint Body] will ensure that the list is always maintained at this level.
4. The list referred to in paragraph 3 shall comprise individuals with specialised knowledge or expertise in law, environmental issues addressed in this Chapter, or the resolution of disputes arising under international agreements. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government with regard to issues related to the matter at stake, or be affiliated with the government of any Party, and shall comply with [the Code of Good Conduct].
5. For matters arising under this Chapter, the Panel of Experts shall be composed of experts from the list referred to in paragraph 3, in accordance with the relevant provisions of Section 3, Sub-Section 1 [Dispute Settlement Procedures] of Chapter 14 [Dispute Settlement].
6. In matters related to the respect of multilateral agreements as set out in Article 2, the Panel shall seek advice from MEA bodies, and it shall rely on any pertinent available interpretative guidance, findings or decisions adopted in those bodies.
7. The Panel of Experts shall issue to the Parties a report setting out the findings of facts, the applicability of the relevant provisions and the basic rationale behind any findings and recommendations that it makes. The Parties shall make the report publicly available within 15 days of its issuance.
8. The Panel's report and recommendations shall not be binding on the Parties. The Parties shall endeavour to discuss appropriate measures to be implemented taking into account the Panel's report and recommendations. The Party concerned shall inform its advisory groups and the other Party of its decisions on any actions or measures to be implemented no later than three months after the public release of the report. The follow-up to the report and the recommendations of the Panel of Experts shall be monitored by the Board on Trade and Sustainable Development. The advisory bodies and the Civil Society Forum may submit observations to the Board on Trade and Sustainable Development in this regard.
8. [For greater certainty, a Party's decision not to follow or to depart from the Panel's report and recommendations shall not trigger the imposition of any economic penalties by the other Party.]

**Article 13: Definitions**

For purposes of this Chapter:

"environmental laws" means laws, regulations, administrative practices and all other measures directly applicable on the Parties' respective territories, the purpose of which is the protection of the environment, or the prevention of a danger to human, animal and plant life or health, or the reduction of the loss of biological diversity, through:

- a. the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants;
- b. the prevention, reduction or control of noise pollution;
- c. the evaluation, authorisation, management, treatment, control or elimination of environmentally hazardous or toxic chemicals, substances, materials and wastes (including waste water), and the dissemination of information related thereto, or;
- d. the conservation and protection of wild flora or wildlife in natural or agricultural ecosystems, including endangered species and their habitat, and specially protected natural areas, in each Party's territory.
- e. *[Other areas under consideration]*

## CAN TEXT

**Chapter XX – Environment**

*Article X.1 Context (The text will need to be coordinated with other relevant sections of the CETA).*

**NOTING** their resolve to establish a free trade area in a manner that is consistent with environmental protection and conservation, enhance and enforce environmental laws and regulations, and strengthen their cooperation on environmental matters, and to promote sustainable development;

**CONVINCED** of the importance of the conservation, protection and enhancement of the environment in their territories for the well-being of present and future generations;

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**ACKNOWLEDGING** that it is inappropriate to relax environmental laws in order to encourage trade and investment;

**REAFFIRMING** the *Rio Declaration on Environment and Development*, and the *Johannesburg Declaration on Sustainable Development*;

**ACKNOWLEDGING** the growing economic, environmental and social links between their countries through the establishment of a free trade area;

**RECOGNIZING** the importance of encouraging voluntary practices of corporate social responsibility within their territories or jurisdictions, to advance coherence between environmental and economic objectives;

**AFFIRMING** the Parties' objective to pursue policies that promote sustainable development and sound environmental management and the need for the mutual reinforcement of trade and environmental policies;

**ACKNOWLEDGING** the importance of transparency and public participation in the development of environmental laws and policies and with respect to environmental governance;

**RECOGNIZING** that enhanced cooperation amongst the Parties brings benefits which can promote sustainable development, strengthen the environmental governance of the Parties and build on international environmental agreements;

**Article X.2: Definitions**

## 1. For purposes of this Chapter:

“**administrative ruling of general application**” means an administrative ruling or interpretation that applies to all persons and fact situations that fall generally within its ambit and that establishes a norm of conduct but does not include:

- a) a determination or ruling made in an administrative or quasi-judicial proceeding that applies to a particular person, good or service of the other Party in a specific case; or
- b) a ruling that adjudicates with respect to a particular act or practice;

“**due process**” is the principle that proceedings are conducted by impartial and independent persons who do not have an interest in the outcome of the matter, that the Parties to the proceedings are entitled to support or defend their respective positions and to present information or evidence, and that the decision is based on such information or evidence;

“**environmental laws**” mean statutory or regulatory provisions of a Party, including legally binding instruments made pursuant to such provisions, the primary purpose of which is the protection of the environment, or the prevention of a danger to human life or health, through:

- a) the prevention, abatement or control of the release, discharge, or emission of pollutants or environmental contaminants;
- b) the control of environmentally hazardous or toxic chemicals, substances, materials and wastes, and the dissemination of information related thereto; or
- c) the conservation and protection of wild flora or wildlife, including endangered species and their habitat, and specially protected natural areas, in the Party's territory,

but does not include any statutory or regulatory provision directly related to worker health and safety or public health, nor any statutory or regulatory provision of which the primary purpose is managing the commercial harvest or exploitation, or subsistence or aboriginal harvesting, of natural resources;

“**environmental governance**” means the domestic system of legal, administrative, scientific and technical processes which collectively support the development, implementation, review, and improvement of laws, policies, programs and procedures for the conservation, protection and enhancement of the environment, including the prevention of environmental danger to human health;

“**person**” means a natural person, or a legal person, such as an enterprise or non-governmental organization;

“**persistent pattern**” means a sustained or recurring course of action or inaction beginning after the date of entry into force of the Canada-European Union Comprehensive Economic and Trade Agreement [CETA];

2. It is understood that a Party has not failed to “**effectively enforce its environmental laws**” in a particular case where the action or inaction in question by agencies or officials of that Party:

- a) reflects a reasonable exercise of discretion in respect of investigatory, prosecutorial, regulatory or compliance matters; or

- b) is the result of *bona fide* decisions to allocate resources to enforcement in respect of other environmental matters which have been determined to have a higher priority.

**Article X.2: Objectives**

The objectives of this Chapter are to:

- a) foster conservation, protection and improvement of the environment in the territories of the Parties for the well-being of present and future generations;
- b) promote sustainable development through environmental and economic policies that are mutually supportive;
- c) promote cooperation between the Parties on the development and improvement of environmental governance;
- d) enhance compliance with, and enforcement of, environmental laws;
- e) support the environment-related provisions of the [CETA];
- f) promote transparency and public participation in the conservation, protection and improvement of the environment, including in the development of environmental laws and policies;
- g) encourage public participation in the implementation of the provisions of this Chapter; and
- h) promote economically efficient and effective environmental measures.

**SECTION A - OBLIGATIONS****Article X.3: Levels of Protection**

Recognizing the sovereign right of each Party to establish its own levels of domestic environmental protection, including its environmental laws, policies and priorities, and to adopt or modify each of these accordingly, each Party shall ensure that its environmental laws and policies provide for high levels of environmental protection, and shall strive to continue to develop and improve those laws and policies and the environmental governance that supports them.

**Article X.4: Compliance with and Enforcement of Environmental Laws**

1. With the aim of achieving high levels of environmental protection and compliance with its environmental laws, each Party shall effectively enforce its environmental laws, subject to Article 19.
2. Each Party shall ensure that violations of its environmental laws can be remedied or sanctioned under its law through judicial, quasi-judicial or administrative proceedings.

**Article X.5: Non-derogation**

A Party shall not encourage trade or investment by weakening or reducing the levels of protection afforded in its environmental laws. Accordingly, a Party shall not waive, or otherwise derogate from, or offer to waive or otherwise derogate from, its environmental laws in a manner that weakens or reduces the protections afforded in those laws to encourage trade or investment.

**Article X.6: Environmental Assessment**

1. Each Party shall ensure that it maintains appropriate procedures for assessing the environmental impacts of proposed projects which may cause significant adverse effects on the environment, with a view to avoiding or minimizing such adverse effects.
2. Each Party shall ensure that its environmental assessment procedures provide for the disclosure of information to the public concerning proposed projects subject to assessment and, in accordance with its law, shall allow for public participation in such procedures.

**Article X.7: Public Information**

1. Each Party shall ensure that its laws, regulations and administrative rulings of general application respecting any matter covered by this Chapter are promptly published or otherwise made available in such a manner as to enable interested persons to become acquainted with them.
2. Subject to Article 21, each Party shall publish or otherwise make available in advance any such law or regulation that it proposes to adopt, so as to enable interested persons to provide comments.

**Article X.8: Private Access to Remedies**

1. Each Party shall ensure that interested persons residing in or established in the territory of such Party may request the Party's competent authorities to investigate alleged violations of its environmental laws and shall give such requests due consideration, in accordance with its law.
2. Each Party shall ensure that persons with a legally recognized interest under its environmental laws in a particular matter shall have appropriate access to administrative, quasi-judicial or judicial proceedings for:
  - a) the enforcement of the Party's environmental laws; and
  - b) the seeking of remedies for violations of those laws.

**Article X.9: Procedural Guarantees**

1. Each Party shall ensure that its administrative, quasi-judicial and judicial proceedings referred to in 8(2) are fair, equitable and transparent and to this end shall provide that such proceedings:
  - a) comply with due process of law;
  - b) are open to the public, except where the administration of justice otherwise requires;
  - c) entitle the parties to the proceedings to support or defend their respective positions and to present information or evidence; and
  - d) are not unnecessarily complicated and do not entail unreasonable fees, unreasonable time limits or unwarranted delays.

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2. Each Party shall provide that final decisions on the merits of the case in such proceedings are:
  - a) in writing and where appropriate state the reasons on which the decisions are based;
  - b) made available to the parties to the proceedings without undue delay; and to the public in accordance with its law; and
  - c) based on information or evidence in respect of which the parties were offered the opportunity to be heard.
3. Each Party shall further provide, as appropriate, that parties to such proceedings have the right, in accordance with its law, to seek review and, where warranted, correction or redetermination of final decisions in such proceedings.
4. Each Party shall ensure that tribunals that conduct or review such proceedings are impartial and independent, and do not have any substantial interest in the outcome of the matter.

### **Article X.10: Corporate Social Responsibility**

Recognizing the substantial benefits brought by international trade and investment, the Parties shall encourage voluntary best practices of corporate social responsibility by enterprises within their territories or jurisdictions, to strengthen coherence between economic and environmental objectives.

### **Article X.11: Measures to Enhance Environmental Performance**

1. The Parties recognize that voluntary and incentive-based measures can enhance environmental performance and contribute to the achievement and maintenance of environmental protection, complementing regulatory provisions under environmental laws. In accordance with its laws and policies, each Party shall promote the development and use of such measures.
2. In accordance with its laws and policies, each Party shall promote the development, establishment, maintenance or improvement of performance goals and standards used in measuring environmental performance.

### **Article X.12: National Point of Contact**

Each Party shall designate an official within the appropriate ministry to serve as the National Point of Contact. The Parties shall inform each other by diplomatic note of such designation within six months of the entry into force of [the CETA], and shall make such information available to the public.

### **Article X.13: Public Information and Accountability**

1. Any person residing in or established in the territory of either Party may submit a written question to either Party, through the National Point of Contact, indicating that the question is being submitted pursuant to this Article regarding that Party's obligations under this Chapter.
2. The Party to which such question is directed shall acknowledge the question in writing, forward the question to the appropriate authority, and provide a response in a timely manner to the person who has sent the question.



3. Where the question is submitted to a Party which is not the Party of the person's residence or its establishment, the responding Party shall, in a timely manner, provide to the other Party copies of the questions and its response.

4. Each Party shall make publicly available in a timely manner questions received and responses given.

**Article X.14: Party-to-Party Information Exchange**

1. On the request of the other Party, a Party shall promptly provide information on any proposed or actual environmental measure and, as promptly as is reasonably possible, shall respond to any questions of the other Party pertaining to any such environmental measure.

2. A Party may notify the other Party of, and provide to that Party, any credible information regarding possible violations of, or failures to effectively enforce, its environmental laws. This information should be specific and sufficient to allow the other Party to inquire into the matter. The notified Party shall take appropriate steps to inquire and to respond to the other Party in accordance with its laws.

**SECTION B – FRAMEWORK FOR ENVIRONMENTAL COOPERATION****Article X.15: Environmental Cooperation**

1. The Parties recognize that cooperation on environment is an effective way to achieve the objectives and fulfill the obligations under this Chapter.
2. The Parties agree to set out in Annex I an indicative list of potential areas of cooperation. Activities that the Parties undertake pursuant to this Chapter will be coordinated and reviewed by the Ministerial Council on the Environment.
3. In carrying out the work program, the Parties will consider the work underway in existing mechanisms.
4. The Parties may consider the following when determining the work plan:
  - technical exchanges;
  - exchanges of information on standards, procedures and best practices;
  - exchange or development of pertinent studies, publications and monographs;
  - joint research projects, studies, reports, whereby expertise from independent specialists may be solicited;
  - joint conferences, workshops, and training sessions.
5. The Parties also acknowledge the importance of cooperative environmental activities in other fora. In this regard, they agree to strengthen their cooperation on environmental issues in bilateral, regional and multilateral fora in which they participate.
6. The Parties may involve the public and interested stakeholders or any other entity as the Parties deem appropriate in their cooperative activities.
7. The Parties agree that it would be desirable if programs of cooperative activities developed by them could have as broad an application and benefit as possible.
8. The Parties shall carry out the cooperative activities with due regard for the priorities and needs of each Party.

**SECTION C – IMPLEMENTATION****Article X.16: Ministerial Council on the Environment**

1. The Parties shall establish a Ministerial Council on the Environment, comprised of ministers responsible for environmental affairs, or their designees. The Council shall be responsible for overseeing the implementation of the provisions set out in this Chapter. The Ministerial Council will be supported by a Committee of the Environment, comprising representatives of each Party.

2. The Council shall meet no later than one year after the date of entry into force of [the CETA] and thereafter as often as it considers necessary to discuss matters of common interest, to oversee the implementation of the provisions set out in this Chapter and to review its progress.

3. The Council shall prepare a summary record of the meetings unless otherwise decided and shall prepare reports and recommendations on the activities related to the implementation of the provisions of this Chapter as appropriate. Such reports may address, among other things:

- a) actions taken by each Party further to its obligations pursuant to this Chapter;
- b) cooperative activities undertaken pursuant to this Chapter; and
- c) recommendations to update Annex X – Multilateral Environmental Agreements of the [CETA].

4. Summary records and reports of the Council meetings shall be made public, unless otherwise decided by the Parties.

**Article X.17: Review**

1. No later than the fifth year after the date of its entry into force, and subsequently as the Council decides, the Council shall consider undertaking a review of the implementation of the provisions in this Chapter with a view to improving its operation and effectiveness.

2. The Council may provide for the participation of the public and independent experts in the review process.

3. The Parties shall make the results of any review public.

**Article X.18: Public Engagement**

1. Each Party shall inform the public of activities of the Ministerial Council undertaken to implement the provisions of this Chapter.

2. Each Party shall endeavour to engage the public, as appropriate, in activities undertaken to implement the provisions of this Chapter.

**Article X.19: Enforcement**

This Chapter shall not be construed to empower a Party's authorities to undertake enforcement activities under its environmental laws in the territory of another Party.

**Article X.20: Private Rights**

A Party shall not provide for a right of action under its law against the other Party on the ground that the other Party has acted in a manner inconsistent with the provisions in this Chapter.

**Article X.21: Protection of Information**

This Chapter shall not be construed to require a Party to release information that would otherwise be prohibited or exempt from disclosure under its laws and regulations, including those concerning access to information and privacy.

**Article X.22: Relation to Other Environmental Agreements**

This Chapter shall not be construed to affect the existing rights and obligations of either Party under other international environmental agreements to which such Party is a party.

**Article X.23: Dispute Resolution**

1. The Parties shall at all times endeavour to agree on the interpretation and application of the provisions in this Chapter.
2. The Parties shall make every attempt, through consultations and the exchange of information, with an emphasis on cooperation, to address any matter that might affect the operation of this Chapter.
3. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the National Point of Contact of the other Party. Upon receipt, the National Point of Contact shall forward the request for consultations to the Committee on the Environment.
4. If the Parties fail to resolve the matter through the Committee, a Party may request in writing consultations with the other Party at the Ministerial Council level. The Party receiving the request shall respond expeditiously. Ministerial consultations shall be concluded no later than 120 days after the request unless the Parties decide otherwise.
5. Following the consultations at the Ministerial Council level, the requesting Party may request that a Review Panel be convened, if it considers the consultations have not satisfactorily addressed the manner and if it considers that:
  - (a) there has been a persistent pattern of failure by the other Party to effectively enforce its environmental laws; or
  - (b) there has been a breach of the obligations set out in Article 5.
6. The Review Panel shall be established with specific terms of reference provided by the Parties, and function in accordance with Annex II and the Model Rules of Procedure.
7. If the Review Panel determines that there has been a persistent pattern of failure by a Party to effectively enforce its environmental laws or that there has been a breach of the obligation set out in Article 5, the Parties may develop a mutually satisfactory action plan to implement the Panel's recommendations. The action plan shall be developed within the 90 days following the Panel's submission of its final report, or such longer period as the Parties may decide. Upon its development,

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the action plan shall be made public without delay.

8. Chapter 14 (Dispute Settlement) does not apply to any dispute concerning the interpretation or application of this Chapter.

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**Annex I**

**Environmental Cooperation**

**In order to promote the achievement of the objectives of this Chapter, and to assist in the fulfilment of their obligations pursuant to it, the Parties have established the following indicative list of areas of cooperation:**

**[To be developed]**

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**Annex II****Dispute Resolution****Review Panel Process****Initial Report:**

1. The Review Panel shall prepare an initial report within 120 days of the date the last panelist is selected or as otherwise decided and submit such report to the Parties.
2. Such report shall contain:
  - (a) findings of fact;
  - (b) the Review Panel's determination as to whether there has been a persistent pattern of failure by a Party to effectively enforce its environmental laws, or whether there has been a breach of the obligation under Article 5; and,
  - (c) in the event of a positive determination under sub paragraph (b) its recommendations to resolve the matter.

**Final Report:**

3. The Parties may provide comments on the initial report within 60 days of its presentation.
4. The Review Panel shall submit the final report to the Parties within 30 days of receiving comments from the Parties.
5. Each Party shall publish the final report within 60 days after it is submitted to the Parties.

**Criteria for Selecting Panel Review:**

6. A Review Panel shall be composed of three panelists appointed by the Parties.
7. Panelists shall:
  - a) be chosen based on their expertise in environmental matters or other appropriate disciplines, as well as on their objectivity, reliability and sound judgment;
  - b) be independent of, and not be affiliated with or take instructions from, either Party; and
  - c) comply with a code of conduct to be established by the Parties.

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8. If either Party believes that a panelist has violated the code of conduct, the Parties shall consult and, if they so decide, the panelist shall be removed and a new panelist shall be selected in accordance with the criteria set out above. The time limits listed in paragraph 1 shall run from the date of the decision to remove the panelist.

9. Individuals may not serve as panelists for a review in which they have, or a person or organization with which they are affiliated has an interest.

10. The chair shall not be a national of either Party.

### Panel Selection Procedures:

11. For purposes of selecting a Review Panel, the following procedures shall apply:

- a) within 20 days of receiving of the request to establish a Review Panel, each Party shall select one panelist;
- b) if one Party fails to select a panelist within such period, the other Party shall select the panelist from among qualified individuals who are nationals of the Party that failed to select its panelist; and
- c) the following procedures shall apply to the selection of the chair:
  - (i) the Party that is the subject of the request for the establishment of a panel (the “subject Party”) shall provide the requesting Party with the names of three qualified candidates to be the chair. The names shall be provided within 20 days of receiving the request to establish the Review Panel;
  - (ii) the requesting Party may choose one of the individuals to be the chair or, if the names were not provided or none of the individuals are acceptable, provide the subject Party with the names of three qualified candidates to be the chair. Those names shall be provided no later than five days after receiving the names under sub-subparagraph (i) or 25 days after the receipt of the request for the establishment of the panel;
  - (iii) the subject Party may choose one of the three individuals to be the chair, within five days of receiving the names under sub-subparagraph (ii), failing which the Parties shall immediately request the President of the International Court of Justice to appoint a chair within 25 days.



Rules of Procedure:

**12. The Parties shall, no later than one year after the entry into force of this [Agreement], establish Model Rules of Procedure, which shall be used to establish and conduct proceedings under Article 23. Unless the Parties decide otherwise, the Review Panel shall perform its functions according to the Model Rules of Procedure and shall ensure that:**

- (a) each Party has the opportunity to provide written and oral submissions to the Review Panel;
- (b) non-governmental organizations, institutions, and persons with relevant information or expertise in the Parties' territories have the opportunity to provide written submissions to the Review Panel; and
- (c) at least one hearing is held before the Review Panel for each set of review panel proceedings, which shall be open to the public, subject to Article 21.

**13. The Parties shall decide on a separate budget for each Review Panel established under Article 23. The Parties shall contribute equally to the budget, unless they decide otherwise.**

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## Chapter XX : Labour

### Article X. Shared Commitments and Objectives

1. The Parties reaffirm their obligations as members of the International Labour Organization (ILO) and their commitments to the **ILO Declaration on Fundamental Principles and Rights at Work** (1998) and the *ILO Declaration on Social Justice for a Fair Globalization* (2008).

2. The Parties wish to build on their respective international commitments, strengthen their cooperation on labour matters and in particular to:

- (a) promote their commitment to the internationally recognized labour principles and rights;
- (b) promote compliance with and effective enforcement by each Party of its labour law;
- (c) promote social dialogue on labour matters among workers and employers, and their respective organizations, and governments;

- (d) pursue cooperative labour-related activities for the Parties' mutual benefit;
- (e) foster full and open exchange of information between these competent authorities regarding labour law and its application in each Party's territory.

## **PART ONE**

### **OBLIGATIONS**

#### **ARTICLE 1: General Commitments**

1. Each Party shall ensure that its labour law and practices embody and provide protection for the following internationally recognized labour principles and rights, particularly bearing in mind their commitments as members of the ILO to the ILO 1998 Declaration:

- a) freedom of association and the effective recognition of the right to collective bargaining;
- b) the elimination of all forms of forced or compulsory labour;
- c) the effective abolition of child labour and a prohibition on the worst forms of child labour;
- d) the elimination of discrimination in respect of employment and occupation;
- e) acceptable minimum employment standards, such as minimum wages and overtime pay, for wage earners, including those not covered by collective agreements;
- f) the prevention of occupational injuries and illnesses and compensation in cases of such injuries or illnesses; and,
- g) non-discrimination in respect of working conditions for migrant workers.

2. To the extent that the principles and rights stated above relate to the ILO, paragraphs (a) to (d) refer only to the ILO 1998 Declaration, whereas the rights stated in paragraphs (e), (f), and (g) more closely relate refer to the ILO's Decent Work Agenda.

#### **ARTICLE 2: Non-Derogation**

Each Party shall not, as a means to encourage trade or investment, waive or otherwise derogate from, or offer to waive or otherwise derogate from, its labour laws in a manner that weakens or reduces adherence to the internationally recognized labour principles and rights referred to in Article 1.

**ARTICLE 3: Government Enforcement Action**

1. Each Party shall, subject to Article 15, promote compliance with and effectively enforce its labour law through appropriate government action, such as:

- a) establishing and maintaining effective labour inspection services, including by appointing and training inspectors;
- b) monitoring compliance and investigating suspected violations, including through on-site inspections;
- c) requiring record keeping and reporting;
- d) encouraging the establishment of worker-management committees to address labour regulation of the workplace;
- e) providing or encouraging mediation, conciliation and arbitration services; and,

f) initiating, in a timely manner, proceedings to seek appropriate sanctions or remedies for violations of its labour law.

2. Each Party shall ensure that its competent authorities give due consideration, in accordance with its law, to any request by an employer, employee or their representatives, or other interested person, for an investigation of an alleged violation of the Party's labour law.

3. A decision a Party makes on the distribution of enforcement resources shall not be a reason for not complying with the provisions of this Chapter. Each Party retains the right to the reasonable exercise of discretion and to bona fide decisions with regard to the allocation of resources among labour enforcement activities for the fundamental labour rights enumerated in Article 1, provided the exercise of such discretion and such decisions are not inconsistent with the obligations of this Chapter.

**ARTICLE 4: Private Action**

Each Party shall ensure that a person with a recognized interest under its labour law in a particular matter has appropriate access to administrative or tribunal proceedings which can give effect to the rights protected by such law, including by granting effective remedies for any breaches of such law.

**73ARTICLE 5: Procedural Guarantees**

1. Each Party shall ensure that proceedings referred to in subparagraphs 1 (b) and (f) of Articles 3 and Article 4 are fair, equitable and transparent and to this end shall provide that:

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73 New, preferred, shorter version since Korea

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- (a) persons who conduct such proceedings are impartial and independent and do not have an interest in the outcome of the matter;
- (b) the parties to the proceedings are entitled to support or defend their respective positions and to present information or evidence, with the decision based on such information or evidence and final decisions on the merits of the case in writing;
- (c) the proceedings are open to the public, except where the law and the administration of justice otherwise requires; and
- (d) the proceedings are free and expeditious or at least do not entail unreasonable fees or delays, and the time limits do not impede exercise of the rights.

2. Each Party shall provide that parties to such proceedings have the right, pursuant to its legislation, to seek review and, correction of final decisions issued in such proceedings.

### ARTICLE 6: Public Information and Awareness

1. Each Party shall ensure that its labour law, regulations, procedures and administrative rulings of general application respecting any matter covered by this Chapter are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.

2. When so required by its law, each Party shall:

- a) publish in advance any such measure that it proposes to adopt; and,
- b) provide interested persons a reasonable opportunity to comment on the proposed measures.

3. Each Party shall promote public awareness of its labour laws, including by:

- a) ensuring the availability of public information related to its labour laws and enforcement and compliance procedures; and
- b) encouraging education of the public regarding its labour laws.

## PART TWO

**INSTITUTIONAL MECHANISMS****ARTICLE 7: Ministerial Council**

1. The Parties hereby establish a Ministerial Council comprised of Ministers responsible for labour affairs of the Parties or their designees.
2. The Council shall meet within the first year after the date of entry into force of the Agreement and thereafter as often as it considers necessary to discuss matters of common interest, to oversee the implementation of the Chapter and review progress under it. The Council may hold joint meetings with Councils established under similar agreements.
3. Unless the Parties otherwise jointly decide, each meeting of the Council shall include a session at which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of this Chapter.
4. The Council may consider any matter within the scope of this Chapter and take such other action in the exercise of its functions as the Parties may jointly decide, including:
  - a) establishing, and assigning responsibilities to, committees, working groups or expert groups; and
  - b) seeking the advice of independent experts.
5. The Council shall review the operation and effectiveness of the Chapter, including the degree to which progress has been made in implementing the objectives of this Chapter, within five years after the date of entry into force of the Agreement and thereafter within such other period as may be directed by the Council. Unless the Council directs otherwise, such review:
  - a) shall be conducted by one or more independent experts. The Parties shall make every effort to agree upon selection of the expert or experts and shall cooperate with the expert or experts in the preparation of the report;
  - b) shall include a literature review and consultation with the members of the public, including representatives of labour and business organizations, as well as an opportunity for the Parties to provide comments;
  - c) shall make recommendations for the future; and
  - d) shall be concluded within 180 days of its commencement and made public within 30 days thereafter.

**ARTICLE 8: National Mechanisms**

1. Each Party may convene a new, or consult an existing, national labour advisory or consultative committee, comprising members of its public, including representatives of its labour and business organizations, to provide views on any issues related to this Chapter.
2. Each Party shall establish an office within its governmental department responsible for labour affairs that shall serve as a National Administrative Office (NAO) within its governmental department responsible for labour affairs and provide to the other Parties its contact information through diplomatic channels.
3. The NAO shall serve as a point of contact with the other Party and perform such functions as are assigned by the Parties or the Council, as well as:
  - (a) coordinate cooperative programs and activities in accordance with Article 9;
  - (b) review public communications in accordance with Article 10; and,
  - (c) provide information to the other Party, the review panels and the public.

#### **ARTICLE 9: Cooperative Activities**

1. The Parties may develop a plan of action for cooperative labour activities for the promotion of the objectives of this Chapter. To the extent possible, such activities shall be linked to any recommendations in any Ministerial Council report referred to in Article 7. An indicative list of areas of possible cooperation between the Parties is set out in Annex 1 to this Chapter.
2. In carrying out the plan of action, the Parties may, commensurate with the availability of resources, cooperate through:
  - a) seminars, training sessions, working groups and conferences;
  - b) joint research projects, including sector studies; and
  - c) other means to which the Parties may agree.

#### **ARTICLE 10: Public Communications**

1. Each Party shall provide for the submission and receipt of public communications on labour law matters that:
  - a) are raised by a national of the Party or by an enterprise or organization established in the territory of the Party;
  - b) arise in the territory of the other Party; and
  - c) pertain to any matters related to this Chapter.
2. Each Party shall consider such communications, as appropriate, in accordance with domestic procedures and notify the public of communications accepted for review within 30 days of such acceptance.

**ARTICLE 11: General Consultations**

1. The Parties shall at all times endeavour to agree on the interpretation and application of this Chapter.
2. The Parties shall make every attempt, including through cooperation, consultations and the exchange of information, to address any matter that might affect its operation.

**PART THREE****PROCEDURES FOR REVIEW OF OBLIGATIONS****ARTICLE 12: Ministerial Consultations**

1. A Party may request in writing consultations with the other Party at the ministerial level regarding any obligation under this Chapter. The Party that is the object of the request shall respond within 60 days of receiving the request, or within such other period as the Parties may agree.
2. To facilitate discussion of the matters under consideration and assist in arriving at a mutually satisfactory resolution:
  - a) each Party shall provide the other with sufficient information in its possession to allow a full examination of the matters raised, subject to any domestic legislation regarding confidential personal and commercial information; and
  - b) either Party may call upon one or more independent experts to prepare a report. The Parties shall make every effort to agree upon the selection of the expert or experts and shall cooperate with the expert or experts in the preparation of the report. Any report shall be made public within 60 days of its receipt by the Parties.
3. Ministerial consultations shall be concluded no later than 180 days after the request unless the Parties agree to another date.

**ARTICLE 13: Establishment and Conduct of Review Panel**

1. Following the conclusion of Ministerial Consultations, the Party that requested the consultations may request that a review panel be convened if the Party considers that:
  - a) the matter is trade-related; and,
  - b) the other Party has failed to comply with its obligations under this Chapter through:
    - i) failure to comply with its obligations under Articles 1 and 2 to the extent that they refer to the ILO 1998 Declaration; or

- ii) a persistent pattern of failure to effectively enforce its labour law through appropriate government action, private rights of action, procedural guarantees, public information and awareness.

2. Unless the Parties otherwise decide, a panel comprised of three independent experts, including a chairperson who is not a national of either Party, shall be established in a manner consistent with the criteria and procedures set out in Annex 2.

3. Unless the Parties otherwise agree, the panel shall perform its functions in accordance with the provisions of this Part, Annex 2 and the Model Rules. The panel:

- a) shall determine, within 30 days of confirmation of its terms of reference, whether the matter is trade-related and shall cease its functions if it determines that the matter is not trade-related;
- b) shall provide the Parties with sufficient opportunity to make written and oral submissions to the panel;
- c) may invite or receive and consider written submissions and any other information from organisations, institutions, the public and persons with relevant information or expertise; and,
- d) shall hold proceedings that are open to the public, except to the extent necessary to protect information in accordance with Article 17 and the Model Rules of Procedure.

#### **ARTICLE 14: Review Panel Reports and Determinations**

1. The panel shall present to the Parties a report that:

- a) makes findings of fact;
- b) addresses the submissions and arguments of the Parties and any relevant information before it pursuant to subparagraph (3)(c) of Article 13;
- c) determines whether the Party that is the object of the review has engaged in non-compliance through failure to comply with its obligations under Articles 1 and 2 to the extent that they refer to the ILO 1998 Declaration or a persistent pattern of failure to effectively enforce its labour law through appropriate government action, private rights of action, procedural guarantees, public information and awareness, or any other determination requested in the terms of reference; and,
- d) makes recommendations for resolution of any non-compliance determined under subparagraph (c), which normally shall be that the Party that is the object of the review adopt and implement an action plan sufficient to remedy the pattern of non-compliance.



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2. The panel shall present its initial report to the Parties within 120 days after the last panelist is selected unless the panel extends the time period by up to a further 60 days or the Model Rules of Procedure otherwise provide. If the panel extends the time period, it shall first give written notice to both Parties setting out the reasons for the extension of time.

3. Either Party may submit written comments to the panel on its initial report within 30 days of presentation of the report or within such other period as the Parties may agree. After considering such written comments, the panel, on its own initiative or on the request of either Party, may reconsider its report and make any further examination that it considers appropriate.

4. The Panel shall present to the Parties a final report within 60 days of the presentation of the initial report, unless the Parties otherwise agree. The final report shall be made public within 60 days of its receipt by the Parties.

5. If, in the final report, a review panel determines that there has been non-compliance within the meaning of subparagraph 1(c), the Parties may develop, within the following 90 days or such longer period as they may agree, a mutually satisfactory action plan to implement the panel's recommendations.

6. Following the expiry of the period set out in paragraph 5, if the Parties were unable to agree on an action plan or the Party subject to review is failing to implement the action plan according to its terms, the requesting Party may request in writing that the panel be reconvened with a view to determining whether or not a monetary assessment needs to be set and paid in accordance with Annex 3.

## PART FOUR

### GENERAL PROVISIONS

#### ARTICLE 15: Enforcement Principle

This Chapter shall not be construed to empower a Party's authorities to undertake labour law enforcement activities in the territory of the other Party.

#### ARTICLE 16: Private Rights

A Party may not provide for a right of action under its domestic law against the other Party on the ground that the other Party has acted in a manner inconsistent with this Chapter.

#### ARTICLE 17: Protection of Information

1. A Party that receives information identified by the other Party as confidential personal or proprietary information shall protect such information as confidential or proprietary.

2. A review panel that receives confidential personal or proprietary information under this Chapter shall treat it in accordance with the Model Rules of Procedure.

## **ARTICLE 18: Cooperation with International and Regional Organizations**

The Parties may establish cooperative arrangements with the International Labour Organization and other competent international and regional organisations to draw on their expertise and resources to achieve the objectives of this Chapter.

## **ARTICLE 19: Definitions**

For purposes of this Chapter:

**"labour law"** means laws, regulations and jurisprudence that implement and protect the labour principles and rights set out in Article 1;

**"persistent pattern"** means a sustained or recurring course of action or inaction beginning after the date of entry into force of the Agreement and does not include a single instance or case;

**"trade-related"** means related to trade or investment matters covered by the Canada-EU CETA, provided that this term shall not be interpreted as including the public sector.

## ANNEX 1

**COOPERATIVE ACTIVITIES**

The Parties have established the following indicative list of areas for cooperative activities that they may develop pursuant to Article 9:

- (a) information sharing: exchanging of information and sharing of best practices on issues of common interest and on relevant events, activities, and initiatives organized in their respective territories;
- (b) international fora: cooperation within international and regional forums such as the International Labour Organization on labour-related issues;
- (c) fundamental rights and their effective application: legislation and practice related to the core elements of the ILO 1998 Declaration (freedom of association and the effective recognition of the right to collective bargaining, elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation);
- (d) worst forms of child labour: legislation and practice related to compliance with ILO Convention 182 on the *Worst Forms of Child Labour*;
- (e) labour administration: institutional capacity of labour administrations and tribunals;
- (f) labour inspectorates and inspection systems: methods and training to improve the level and efficiency of labour law enforcement, strengthen labour inspection systems, and help ensure compliance with labour laws;
- (g) labour relations: forms of cooperation and dispute resolution to ensure productive labour relations among workers, employers, and governments;
- (h) working conditions: mechanisms for supervising compliance with statutes and regulations pertaining to hours of work, minimum wages and overtime, occupational safety and health, and employment conditions;
- (i) gender: gender issues, including the elimination of discrimination in respect of employment and occupation;
- (j) migrant workers: dissemination of information regarding labour rights of migrant workers in each Party's territory;
- (k) such other matters as may promote the purposes of this Chapter.

2. In identifying areas for labour cooperation and capacity building, and in carrying out cooperative activities, each Party may consider the views of its worker and employer representatives, as well as those of other members of the public.

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**ANNEX 2****PROCEDURES RELATED TO REVIEW PANELS****Qualifications of Panelists**

1. Panelists shall:
  - a) be chosen on the basis of expertise in labour matters or other appropriate disciplines, objectivity, reliability and sound judgment;
  - b) be independent of, and not be affiliated with or take instructions from, either Party; and,
  - c) comply with a code of conduct to be established by the Parties.
2. If either Party believes that a panelist is in violation of the code of conduct, the Parties shall consult and, if they agree, the panelist shall be removed and a new panelist shall be selected in accordance with the procedures set out in paragraph 4 that were used to select the panelist who was removed. The time limits shall run from the date of their agreement to remove the panelist. The Model Rules of Procedure may provide procedures for resolving the situation if the Parties do not agree.
3. Individuals may not serve as panelists with respect to a review in which they have, or a person or organization with which they are affiliated has, an interest.

**Panel Selection Procedures**

4. For purposes of selecting a review panel, the following procedures shall apply:
  - (a) within 20 days of the receipt of the request for the establishment of a panel, each Party shall select one panelist;
  - (b) if one Party fails to select its panelist within such period, the other Party shall select the panelist from among qualified individuals who are nationals of the Party that has failed to select its panelist;
  - (c) the following procedures shall apply to the selection of the chairperson:
    - (i) the Party that is the object of the review shall provide the Party that made the request with the names of three individuals who it considers to be qualified to be the chairperson. The names shall be provided no later than 20 days after the receipt of the request for the establishment of the panel;
    - (ii) the Party that made the request may choose one of the individuals to be the chairperson or, if the names were not provided or none of the individuals is acceptable, provide the Party that is the object of the review with the names of three individuals who it considers to be qualified to be the chairperson. Those names shall be provided no later than five days after

receiving the names under subparagraph (i) or 25 days after the receipt of the request for the establishment of the panel;

- (iii) the Party that is the object of the review may choose one of the three individuals to be the chairperson, no later than five days after receiving the names under subparagraph (ii), in default of which the Parties shall immediately request the Director General of the International Labour Office to appoint a chairperson within 25 days.

#### **Conduct of the Panel**

5. The Parties shall, no later than one year after the entry into force of the Agreement, establish Model Rules of Procedure, which shall be used for the establishment and conduct of proceedings under Part Three. The Model Rules will include a code of conduct for the purposes of paragraph 1 and rules for the protection of information under Article 17.

6. The Parties shall agree on a separate budget for each set of panel proceedings pursuant to Articles 13 to 14. The Parties shall contribute equally to the budget, unless they agree otherwise.

7. Unless the Parties otherwise agree, within 30 days after the Parties establish the panel, the terms of reference shall be:

"To examine, in light of the relevant provisions of this Chapter, whether the Party that was the object of the request has, in a trade-related matter, failed to comply with its obligations under Articles 1 and 2 to the extent that they refer to the ILO 1998 Declaration, or engaged in a persistent pattern of failure to effectively enforce its labour law through appropriate government action, private rights of action, procedural guarantees, public information and awareness, and to make findings, determinations and recommendations in accordance with paragraph 1 of Article 14."

8. For a determination under paragraph 3 of Article 13 of whether the matter is trade-related, the Party which has requested the panel has the onus of establishing that the matter is trade-related. For a determination under subparagraph 1(c) of Article 14 of whether the Party that is the object of the request has failed to comply with its obligations, the onus of establishing such non-compliance is on the Party which has requested the panel supplemented by any other information provided under subparagraph 3(c) of Article 13.

9. Canada shall, no later than the date on which a panel is convened pursuant to Article 13 respecting a matter within the scope of paragraph 3 of this Annex, notify the EU in writing of whether any recommendation of a panel in a report under Article 14 or any monetary assessment imposed by a panel under Annex 3 with respect to Canada shall be addressed to Her Majesty in right of Canada or Her Majesty in right of the province concerned.

10. A Panel may not release the final report other than to the Parties. Panelists may furnish separate opinions on matters that are not the subject of unanimous

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agreement. A Panel however may not disclose which panelists are associated with majority or minority opinions.

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## ANNEX 3

## MONETARY ASSESSMENTS

1. The panel shall reconvene as soon as possible after delivery of the request pursuant to paragraph 6 of Article 14. Within 90 days after being reconvened, the panel shall determine whether the terms of the action plan have been implemented or the non-compliance otherwise remedied.
2. In the event of a negative determination under paragraph 1 above, the panel shall assess a monetary assessment which reflects a determination of the estimated costs of implementing the action plan, or in the absence of an action plan, other appropriate measures to remedy the non-compliance provided that:
  - a) the panel may adjust the assessment to reflect:
    - i. any mitigating factors, such as good faith efforts made by the Party to begin remedying such non-compliance after the final report of the panel, bona fide reasons for the Party's failure to comply with such obligations or a real likelihood that the cost of the assessment would have a negative impact on vulnerable members of society;
    - ii. any aggravating factors, such as the pervasiveness and duration of the Party's failure to comply with its obligations; or
    - iii. the Party's national conditions, circumstances and needs; and
  - b) in no circumstances shall the assessment exceed \$15 million U.S. dollars annually, or its equivalent in the currency of the Party complained against, adjusted to the rate of inflation of that Party.
3. Unless the Council otherwise decides, monetary assessments shall be paid to the complaining Party. Where the circumstances warrant, the Council may decide that an assessment shall be paid into an interest-bearing fund designated by the Council and shall be expended at the direction of the Council to implement the action plan or other appropriate measures.
4. Ninety days from the date on which the panel determines the amount of the monetary assessment under paragraph 2, or at any time thereafter, the requesting Party may provide notice in writing to the other Party demanding payment of the monetary assessment. The monetary assessment shall be paid in equal, quarterly instalments beginning 120 days after the requesting Party provides such notice and ending upon agreement of the Parties or upon the date of any panel determination under paragraph 5.
5. If the Party that was the object of the review considers that it has eliminated the non-compliance, it may refer the matter to the panel by providing written notice to the other Party. The panel shall be reconvened within 60 days of such notice and issue its report within 90 days thereafter.



6. In Canada, the procedures for enforcement of the monetary assessment shall be the following:

- (a) The EU may file in a court of competent jurisdiction a certified copy of a panel determination under paragraph 2 above only if Canada has failed to comply with the terms of a notice provided under paragraph 4 within 180 days of it being made;
- (b) when filed, the panel determination, for purposes of enforcement, shall become an order of the court;
- (c) The EU may take proceedings for enforcement of a panel determination that is made an order of the court, in that court, against the person in Canada against whom the panel determination is addressed in accordance with paragraph 9 of Annex 2;
- (d) proceedings to enforce a panel determination that has been made an order of the court shall be conducted in Canada by way of summary proceedings, provided that the court shall promptly refer any question of fact or any question of interpretation of the panel determination to the panel that made the determination, and the decision of the panel shall be binding on the court;
- (e) a panel determination that has been made an order of the court shall not be subject to domestic review or appeal; and
- (f) an order made by the court in proceedings to enforce a panel determination that has been made an order of the court shall not be subject to review or appeal.

7. In the EU, the procedures for enforcement of the monetary assessment shall be the following. If the EU has failed to comply with a notice provided under paragraph 4 above within 180 days of it being made, the panel determination in the EU shall be executed:

- (a) subject to subparagraph (b), Canada may file in a court of competent jurisdiction a certified copy of a panel determination;
- (b) Canada may file in court a panel determination that is a panel determination described in paragraph 1(a) only if the Party complained against has failed to comply with the determination within 180 days of when the determination was made;
- (c) the court of competent jurisdiction is the (EU to confirm);
- (d) Canada shall certify that the panel determination is final and not subject to appeal;
- (e) the (court of competent jurisdiction -- EU to confirm) shall issue a resolution ordering the enforcement of the panel determination within 10 days of when the petition was filed;
- (f) the resolution of the (court of competent jurisdiction -- EU to confirm) shall be addressed to the competent administrative authority for its prompt compliance.

8. Any change by the Parties to the procedures adopted and maintained by each of them pursuant to this Article that has the effect of undermining the provisions of this Article shall be considered a breach of compliance.

## CHAPTER [14] DISPUTE SETTLEMENT

### SECTION 1

#### GENERAL PROVISIONS

##### ARTICLE 14.1: COOPERATION

The Parties shall at all times endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultations to arrive at a mutually satisfactory resolution of any matter that might affect its operation.

##### ARTICLE 14.2: SCOPE

[Except as otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply with respect to the settlement of all disputes between the Parties regarding the interpretation or application of this Agreement or wherever a Party considers that

1. an actual [or proposed: **EC is to consider**] measure of the other Party is [or would be] inconsistent with the obligations of this Agreement; [EC: prefers to limit to actual measures]
2. the other Party has otherwise failed to carry out an obligation under this Agreement.]

[EC proposal: This Chapter applies to any dispute concerning the interpretation and application of the provisions of this Agreement unless otherwise [EC: expressly] provided].

##### ARTICLE 14.3: CHOICE OF FORUM

1. [[Subject to paragraph 2,] disputes regarding any matter arising under both this Agreement and the WTO Agreement or any other free trade agreement to which the disputing Parties are party, or any successor agreement thereto, may be settled in either forum at the discretion of the requesting Party.

2. [In any dispute referred to in paragraph 1 where the responding Party claims that a matter is subject to Article [X – Multilateral Environmental Agreements] and requests in writing that the matter be considered under this Agreement, the requesting Party, in respect of that matter, may have recourse to dispute settlement procedures only under this Agreement.]
3. Where a Party requests the establishment of a dispute settlement panel under an agreement referred to in paragraph 1, the forum selected shall be used to the exclusion of the other[, unless the responding Party makes a request under paragraph 2].]

[EC alternative proposal to be submitted on Temporary Forum Exclusion to allow dispute settlement under both this Agreement and the WTO Agreement, either simultaneously or consecutively]

- [EC: 1. Recourse to the dispute settlement provisions of this Chapter shall be without prejudice to any action in the WTO framework, including dispute settlement action.
2. However, where a Party has, with regard to a particular measure, instituted a dispute settlement proceeding, either under this Chapter or under the WTO Agreement, it may not institute a dispute settlement proceeding regarding the same measure in the other forum until the first proceeding has ended. [In addition, a Party shall not seek redress for the breach of an obligation which is identical under the [CETA] and under the WTO Agreement in the two forums. In such case, once a dispute settlement proceeding has been initiated, the Party shall not bring a claim seeking redress for the breach of the identical obligation under the other agreement to the other forum, unless the forum selected fails, for procedural or jurisdictional reasons, to make findings on that claim.]
  3. For the purposes of paragraph 2:
    - (a) dispute settlement proceedings under the WTO Agreement are deemed to be initiated by a Party's request for the establishment of a panel under Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes contained in Annex 2 of the WTO Agreement (hereinafter referred to as the "DSU") and are deemed to be concluded when the DSB adopts the Panel's report, and the Appellate Body's report as the case may be, under Articles 16 and 17.14 of the DSU; and

- (b) dispute settlement proceedings under this Chapter are deemed to be initiated by a Party's request for the establishment of an arbitration panel under Article 14.4.1 and are deemed to be concluded when the arbitration panel issues its ruling to the Parties and to the Trade Committee under Article 14.7.
4. Nothing in this Agreement shall preclude a Party from implementing the suspension of obligations authorised by the DSB. The WTO Agreement shall not be invoked to preclude a Party from suspending obligations under this Chapter.]

## SECTION 2 CONSULTATIONS

### ARTICLE 14.4: CONSULTATIONS

1. A Party may request in writing consultations with [any] [EC: the] other Party regarding any matter referred to in Article 14.2.
2. The requesting Party [shall deliver the request to the responding Party, and] shall set out the reasons for the request, including the identification of the specific measure [or other matter] at issue under Article 14.2 and an indication of the legal basis for the complaint.
3. Subject to paragraph 4, the disputing Parties shall enter into consultations within 30 days of the [date of receipt] of the request by the responding Party. Consultations shall take place, unless the Parties agree otherwise, in the territory of the responding Party.
4. In cases of urgency, including those involving perishable or seasonal goods or services that rapidly lose their trade value, consultations shall commence within 15 days of the date of receipt of the request by the responding Party.
5. The disputing Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter through consultations under this Article [or other consultative provisions of this Agreement]. To this end, each disputing Party shall:
  - a. provide sufficient information to enable a full examination of the matter at issue and how it operates;
  - b. treat any confidential or proprietary information exchanged in the course of consultations [on the same basis as the Party providing the information]; and

**Comment [C6]:** general provision on the modification of time periods to be added

**Comment [LDC7]:** at second stage, we should streamline date of submission/date of receipt – see also rule 3

- c. make available the personnel of its government agencies or other regulatory bodies who have expertise in the matter subject to the consultations.
- 6. Consultations are confidential and without prejudice to the rights of the disputing Parties in proceedings under this Chapter.
- 7. Consultations may be held in person or by any other means agreed to by the disputing Parties.

[If there is a proposal on Mediation/Conciliation in relation to NTBs, place holder is here to consider its scope and placement].  
 [EC: will send a separate proposal on mediation mechanism]

### SECTION 3 DISPUTE SETTLEMENT PROCEDURES

#### SUB-SECTION 1 – DISPUTE SETTLEMENT PROCEDURES

#### ARTICLE 14.5: INITIATION OF THE DISPUTE SETTLEMENT PROCEDURE

1. Unless the disputing Parties agree otherwise, if a matter referred to in Article 14.3 has not been resolved within:
  - a. 45 days of the date of receipt of the request for consultations; or
  - b. 25 days of the date of receipt of the request for consultations for matters referred to in Article 14.4(4);
 the requesting Party may refer the matter to a dispute settlement panel by providing written notice to the responding Party.
2. In the notice referred to in sub-paragraph 1, the requesting Party shall identify the specific measure [or other matter at issue] and [CDN: provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.] [EC: it shall explain how such measure constitutes a breach of the provisions referred to in Article 2.]

#### ARTICLE 14.6: COMPOSITION OF THE DISPUTE SETTLEMENT PANEL

1. The panel shall comprise three individuals.
2. [Each disputing Party shall, within 30 days of the receipt of the notice in Article 14.5(1), appoint one panel member, propose up to four candidates to serve as Chair of the panel, and notify the other disputing Party in writing of the panel member appointment and its proposed candidates to

serve as Chair. If a disputing Party fails to appoint a panel member in accordance with this paragraph, the panel member shall be selected by the other Party from the chair candidates.

3. The disputing Parties shall endeavour to agree on and appoint the Chair from among the proposed candidates for Chair within 45 days of the receipt of the list of candidates. If the Parties are unable to agree on the Chair within this time period, the Chair shall be selected by lot from the proposed candidates within seven days.
4. If a panel member withdraws, is removed, or becomes unable to serve, all time periods applicable to that panel's proceedings shall be suspended until a replacement is appointed. The Parties shall appoint the replacement as follows:
  - a. a panel member appointed by a Party shall be replaced by that Party within 30 days, failing which the replacement shall be appointed in accordance with the second sentence of paragraph 2;
  - b. a chair shall be replaced by a person agreed to by both disputing Parties within 30 days, failing which the replacement shall be appointed in accordance with the second sentence of paragraph 3; and
  - c. if an appointment in sub-paragraph (a) or (b) would require selecting from the chair candidates and there are no remaining chair candidates, each Party shall propose up to three additional candidates within 30 days and the Parties shall then follow the applicable procedure in sub-paragraph (a) or (b).]

[EC to propose text on panel selection by way of roster with a contingency if there is no agreed upon roster]

[EC proposal (see also Article X below):

- [2. Within 10 working days of the date of receipt by the Party complained against of the request for the establishment of an arbitration panel, the Parties shall consult in order to reach an agreement on the composition of the arbitration panel.
3. In the event that the Parties are unable to agree on its composition within the time frame laid down in paragraph 2, either party may request the chair of the [institutional body to be defined], or the chair's delegate, to draw by lot all the three members of the arbitration panel from the list established under [Article X], one

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among the individuals proposed by the complaining Party, one among the individuals proposed by the Party complained against and one among the individuals selected by the Parties to act as chairperson. Where the Parties agree on one or more of the members of the arbitration panel, any remaining members shall be selected by the same procedure in the applicable list of panellists.

4. The chair of the [institutional body to be defined], or the chair's delegate, shall select the arbitrators within five working days of the request referred to in paragraph 3 by either Party.
5. The date of establishment of the arbitration panel shall be the date on which the three arbitrators are selected.
6. Should any of lists provided for in Article [X] not be established at the time a request is made pursuant to paragraph 3 the three arbitrators shall be drawn by lot from the individuals which have been formally proposed by one or both of the Parties.
7. Replacement of arbitrators shall take place only for the reasons and according to the procedures detailed in [rules 18 to 22] of the Rules of Procedure. ]

5. Each panel member shall:

- a. have expertise or experience in law, international trade, other matters covered by this Agreement, or in the settlement of disputes arising under international trade agreements;
- b. be chosen strictly on the basis of objectivity, reliability and sound judgment;
- c. [be independent of] [not be affiliated with] either disputing Party;
- d. not have dealt with the matter at issue in any capacity;
- e. [not be a national of the Parties, nor have his or her usual place of residence in the territory of either of the Parties;] and
- f. comply with [a] [the] Code of Conduct [that the Parties shall establish at its first session following the entry into force of this Agreement]. [EC: needs coordination with article X.2]

**Comment [C8]:** EC to provide a model Code of Conduct

EC proposal in conjunction with panel composition:

[ARTICLE X – PLACE TO BE DECIDED LATER  
Lists of arbitrators

1. The [institutional body] shall, at its first meeting after the entry into force of this Agreement, establish a list of at least 15 individuals who are willing and

able to serve as arbitrators. Each of the Parties shall propose at least five individuals to serve as arbitrators. The two Parties shall also select at least five individuals who are not nationals of either Party to act as chairperson. The [institutional body] will ensure that the list is always maintained at this level.

[2. The arbitrators must have specialised knowledge or experience of law and international trade. They shall be independent, serve in their individual capacities and not take instructions from any organisation or government, or be affiliated with the government of any of the Parties, and shall comply with the Code of Conduct annexed to this Protocol. *[EC: need to coordinate with para 5 of art. 6]*]

3. The [institutional body] may establish additional lists of at least 15 individuals having a sectoral expertise in specific matters covered by the Association Agreement, or with experience in mediation. When recourse is made to the selection procedure of Article 6(3), the chairpersons of the [institutional body] may use such sectoral list upon agreement of both Parties.]

#### ARTICLE 14.7: INTERIM PANEL REPORT

1. The panel shall present to the disputing Parties an interim report within [150] days after the last panel member is appointed. The report shall contain:
  - a. findings of fact;
  - b. determinations as to whether the responding Party has conformed with its obligations under this Agreement [and any other finding or determination requested in the terms of reference]; and
  - c. [recommendations for resolution of the dispute, including determining the level of compensation equivalent to the value of trade loss suffered by the requesting Party.]
2. Each Party may submit written comments to the panel on the interim report, subject to any time limits set by the panel. After considering any such comments, the panel may:
  - a. reconsider its report; or
  - b. make any further examination that it considers appropriate.
3. Notwithstanding any other provision of this Chapter, the interim report of the panel shall be confidential.

**Comment [C9]:** revisit this once we have agreed upon how a panel is composed.

#### ARTICLE 14.8: FINAL PANEL REPORT

1. Unless the disputing Parties agree otherwise, the panel shall issue a report in accordance with the provisions of this Chapter.



2. The panel shall base its report on the provisions of this Agreement, applied and interpreted in accordance with the rules of interpretation of public international law, the submissions and argument of the disputing Parties, and any information and technical advice put before it under the provisions of this Chapter. [EC to propose text that panels to consider WTO decisions where reference is made to WTO provisions in this Agreement] [EC to propose “not to add or diminish the rights and obligations of the Parties to this Agreement”] [Placement of this provision to be decided later].

EC proposal:

[Any arbitration panel shall interpret the provisions referred to in Article 14.2 in accordance with customary rules of interpretation of public international law, including those set out in the *Vienna Convention on the Law of Treaties*. Where an obligation under this Agreement is identical to an obligation under the WTO Agreement, the arbitration panel shall adopt an interpretation which is consistent with any relevant interpretation established in reports of panels and the Appellate Body adopted by the WTO DSB. The rulings of the arbitration panel cannot add to or diminish the rights and obligations provided for in the provisions referred to in Article 14.2.]

3. The panel shall present to the Parties a final report within 30 days of presentation of the interim report.
4. Each Party shall make publicly available the final report of the panel [X][days] after it is presented to the disputing Parties, subject to Article 14.12 (2) (h).
5. In cases of urgency, including those involving perishable or seasonal goods or services that rapidly lose their trade value, the arbitration panel and the parties shall make every effort to accelerate the proceedings to the greatest extent possible. The Panel shall aim at presenting an interim report to the parties within [75] days after the last panel member is appointed, and a final report within [15] days of the presentation of the interim report. Upon request of a party, the arbitration panel may give a preliminary ruling within 10 days of its [establishment] on whether it deems the case to be urgent.

**Comment [C10]:** revisit this once we have agreed upon how a panel is composed.

## SUB-SECTION 2: COMPLIANCE

**ARTICLE 14.9: COMPLIANCE WITH THE PANEL RULING**

1. [On receipt of the final report of a panel, the disputing Parties shall agree on the resolution of the dispute. Unless otherwise agreed by the disputing Parties the resolution shall be in conformity with the determinations and any recommendations of the panel.
2. Wherever possible, the resolution shall be:
  - a. removal of a measure [or other matter] found by the panel to be inconsistent with an obligation in this Agreement; or
  - b. removal of the nullification or impairment.
3. If the disputing Parties are unable to agree on a resolution within 30 days of presentation of the final report, or such other period of time as the disputing Parties may agree, the responding Party shall, [if so requested by the requesting Party,] [pay compensation to the requesting Party in accordance with Article 14.10]. ]

**ARTICLE 14.10: TEMPORARY REMEDIES IN CASE OF NON-COMPLIANCE**

[Canada wishes to explore the idea of a compulsory compensation remedy consisting of a monetary payment based on the value of the trade loss suffered or the benefits nullified or impaired as a result of the breach, from the date that the inconsistent measure was first put into force until such time as the disputing Parties reach agreement on a resolution of the dispute or until such time as the responding Party has brought itself into conformity with this Agreement.]

[EC notes on Articles 14.9 and 14.10 that an alternative approach would be a reasonable period of time to comply, failing which the requesting Party may suspend concessions after a compliance panel review]

**ARTICLE 14.11: REVIEW OF ANY MEASURE TAKEN TO COMPLY WITH THE PANEL RULING**

1. [A disputing Party may] [The complaining Party shall], by written notice to the other Party, request that a panel be reconvened to make a determination with respect to any disagreement as to the existence or consistency with this Agreement, subject to Article 14.2, of a measure taken to comply with the determination or recommendations of the panel.

2. In the written notice of the request referred to in sub-paragraph 1, the Party shall identify the specific measure or matter at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.
3. The panel shall be reconvened either:
  - a. upon receipt by the other Party of a written notice referred to in sub-paragraph 1; or
  - b. in the event that any original panel member is unable to serve on the panel, on the date on which a replacement member is appointed in accordance with the provisions of Article 14.5.
4. The provisions of Article 14.6, 14.7 and 14.11 apply to the procedures adopted and reports issued by the panel reconvened under this Article, with the exception that the panel shall:
  - a. present a final report within [90] days of being reconvened; and
  - b. present an interim report 15 days prior to presenting a final report.
5. A panel reconvened under this Article may include in its final report a recommendation, where appropriate, [that any compensation be terminated or that the amount of compensation be modified] [alternative approach is the termination of the sanctions where suspension of concessions is provided for].

## [EC PROPOSAL ON COMPLIANCE]

### ARTICLE 9

#### Compliance with the arbitration panel ruling

Each Party shall take any measure necessary to comply with the arbitration panel ruling, and the Parties shall endeavour to agree on the period of time to comply with the ruling.

### ARTICLE 10

#### The reasonable period of time for compliance

1. No later than 30 days after the receipt of the notification of the arbitration panel ruling by the Parties, the Party complained against shall notify the complaining Party and the [institutional body] of the time it will require for compliance (reasonable period of time), if immediate compliance is not possible.

2. In the event of disagreement between the Parties on the reasonable period of time with which to comply with the arbitration panel ruling, the complaining Party shall, within 20 days of the receipt of the notification made under paragraph 1 by the Party complained against, request in writing the arbitration panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously to the other Party and to the [institutional body]. The arbitration panel shall notify its ruling to the Parties and to the [institutional body] within 30 days from the date of submission of the request.

3. The reasonable period of time may be extended by mutual agreement of the Parties.

#### ARTICLE 11

##### Review of any measure taken to comply with the arbitration panel ruling

1. The Party complained against shall notify the other Party and the [institutional body] before the end of the reasonable period of time of any measure that it has taken to comply with the arbitration panel ruling.

2. In the event of disagreement between the Parties concerning the existence of any measure notified under paragraph 1 or its consistency with the provisions referred to in Article 2, the complaining Party may request in writing the arbitration panel to rule on the matter. Such request shall identify the specific measure at issue and shall explain how such measure is inconsistent with the provisions referred to in Article 2. The arbitration panel shall notify its ruling within 90 days of the date of submission of the request. In cases of urgency, including those involving perishable or seasonal goods, the arbitration panel shall notify its ruling within 45 days of the date of submission of the request.

#### ARTICLE 12

##### Temporary remedies in case of non-compliance

1. If the Party complained against fails to notify any measure taken to comply with the arbitration panel ruling before the expiry of the reasonable period of time, or if the arbitration panel rules that the measure notified under Article 11(1) is inconsistent with that Party's obligations under the provisions referred to in Article 2, the Party complained against shall, if so requested by the complaining Party, present an offer for temporary compensation.

2. If no agreement on compensation is reached within 30 days of the end of the reasonable period of time or of notification of the arbitration panel ruling under Article 11 that the measure taken to comply is inconsistent with the provisions referred to in Article 2, the complaining Party shall be entitled, upon notification to the other Party and to the [institutional body], to suspend obligations arising from any provision referred to in Article 2 at a level equivalent to the nullification or impairment caused by the violation. The complaining Party may implement the suspension 10 working days after the date of receipt of the notification by the Party complained against, unless the Party complained against has requested arbitration under paragraph 3.

3. If the Party complained against considers that the level of suspension is not equivalent to the nullification or impairment caused by the violation, it may request in writing the arbitration panel to rule on the matter. Such request shall be notified to the other Party and to the [institutional body] before the expiry of the 10-working-day period referred to in

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paragraph 2. The arbitration panel, having sought, if appropriate, the opinion of experts, shall notify its ruling on the level of the suspension of obligations to the Parties and to the [institutional body] within 30 days of the date of submission of the request. Obligations shall not be suspended until the arbitration panel has delivered its ruling, and any suspension shall be consistent with the arbitration panel ruling.

4. The suspension of obligations shall be temporary and shall be applied only until any measure found to be inconsistent with the provisions referred to in Article 2 has been withdrawn or amended so as to bring it into conformity with those provisions, as established under Article 13, or until the Parties have settled the dispute.

### ARTICLE 13

Review of any measure taken to comply after the suspension of obligations

1. The Party complained against shall notify the other Party and the [institutional body] of any measure it has taken to comply with the ruling of the arbitration panel and of its request for an end to the suspension of obligations applied by the complaining Party.

2. If the Parties do not reach an agreement on the compatibility of the notified measure with the provisions referred to in Article 2 within 30 days of the date of receipt of the notification, the complaining Party shall request in writing the arbitration panel to rule on the matter. Such request shall be notified simultaneously to the other Party and to the [institutional body]. The arbitration panel ruling shall be notified to the Parties and to the [institutional body] within 45 days of the date of submission of the request. If the arbitration panel rules that any measure taken to comply is in conformity with the provisions referred to in Article 2, the suspension of obligations shall be terminated.]

### [ARTICLE 14.12: RULES OF PROCEDURE

1. A panel shall follow the provisions of this Chapter. A panel may establish, in consultation with the disputing Parties, supplementary rules of procedure that do not conflict with the provisions of this Chapter.
2. Unless the disputing Parties agree otherwise, the rules of procedure of a panel shall ensure:
  - a. an opportunity for each disputing Party to provide initial and rebuttal written submissions;
  - b. subject to subparagraph (h), that a disputing Party may make available to the public either Party's written submissions, written versions of oral statements and written responses to requests or questions from the panel at any time after such information is submitted to the panel;
  - c. the right to at least one oral hearing before the panel;
  - d. [that the Parties endeavour to agree on the use of a common working language, otherwise each Party shall expeditiously

arrange for and bear the costs of translation of its written submissions into the language chosen by the other Party and the Party complained against shall arrange for the interpretation of oral submissions into the languages chosen by the Parties;]

- e. that the panel rulings shall be issued in the language or languages chosen by the Parties;
- f. subject to subparagraph (h), that oral hearings shall be open to the public;
- g. that the panel allow a non-governmental person of a Party to provide written views regarding the dispute that may assist the panel in evaluating the submissions and arguments of the disputing Parties;
- h. that all submissions and comments made to the panel be available to the other disputing Party, and
- i. the protection of information designated by either disputing Party for confidential treatment.

3. Unless the disputing Parties agree otherwise, the terms of reference of the Panel shall be:

“To examine, in the light of the relevant provisions of the Agreement, the matter referred to in the notification of referral to a panel, and to make findings, determinations and recommendations as provided in Article 14.7.”

4. [If a disputing Party requests the Panel to make findings regarding the degree of adverse trade effects of any measure found not to conform to the obligations of the Agreement, the terms of reference shall so indicate.]
5. On request of a disputing Party, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, subject to any terms and conditions agreed by the Parties. Any information obtained in this manner must be disclosed to each Party and submitted for their comments.
6. The panel may rule on its own jurisdiction.
7. The panel may delegate to the chair authority to make administrative and procedural decisions.
8. The panel may, in consultation with the disputing Parties, modify any time-period applicable in the panel proceedings and make other

procedural or administrative adjustments as may be required for the fairness or efficiency of the proceeding.

9. Findings, determinations and recommendations of the panel under Article 14.7 should be made by consensus, but if consensus is not possible then by a majority of its members.
10. Panel members may [not] furnish separate opinions on matters not unanimously agreed.
11. The disputing Parties shall bear the expenses of the panel, including the remuneration of the panel members, equally.]

[EC to provide model Rules of Procedure ]

[EC: proposed rules are in annex. We should make sure that all the issues above are properly reflected in the rules. Also, there are a few procedural issues that are not fully addressed in the rules and would need to be clarified in the body of the chapter or in the rules themselves. In particular, we should have provisions on these issues, here or elsewhere

## ARTICLE X

### Rules of Procedure

1. Dispute settlement procedures under this Chapter shall be governed by the Rules of Procedure annexed to this Agreement.
2. Any meeting of the arbitration panel shall be open to the public in accordance with the Rules of Procedure, unless the Parties agree otherwise.

## ARTICLE X

### Information and technical advice

1. Upon its own initiative or at the request of a Party, the arbitration panel may obtain information from any source, including the Parties, which it deems appropriate for the arbitration panel proceeding. In particular, the arbitration panel has the right to seek the relevant opinion of experts as it deems appropriate. The panel shall consult the Parties before choosing such experts. The panel shall not be bound by the Parties' opinion on the experts. Any information obtained in this manner must be disclosed to each of the Parties and submitted for their comments.
2. Interested natural or legal persons established in the Parties are authorised to submit amicus curiae briefs to the arbitration panel in accordance with the Rules of Procedure.

## ARTICLE X

## Arbitration panel rulings

1. The arbitration panel shall make every effort to make its rulings by consensus. Where, nevertheless, a ruling cannot be made by consensus, the matter at issue shall be decided by majority vote.
2. Any ruling of the arbitration panel shall be binding on the Parties and shall not create any rights or obligations to physical or legal persons. The ruling shall set out the findings of fact, the applicability of the relevant provisions of the Association Agreement and the basic rationale behind any findings and conclusions that it makes. [The [institutional body] shall make the arbitration panel ruling publicly available in its entirety unless it decides not to do so in order to ensure the confidentiality of confidential business information.] *[EC comment: last sentence to be coordinated with art. 8.4]*

## ARTICLE X

## Time-limits

1. All time-limits laid down in this Protocol, including the limits for the arbitration panels to notify their rulings, shall be counted in calendar days from the day following the act or fact to which they refer, unless otherwise specified.
2. Any time-limit referred to in this Protocol may be modified by mutual agreement of the Parties. Upon request of a Party, the arbitration panel may modify the time-limits applicable in the proceedings.]

**[ARTICLE 14.13: REFERRALS OF MATTERS FROM JUDICIAL OR ADMINISTRATIVE PROCEEDINGS]**

1. If an issue of interpretation or application of this Agreement arises in any domestic judicial or administrative proceeding of a Party that a Party considers would merit its intervention, or if a court or administrative body solicits the views of a Party, that Party shall notify the other Parties. The [CETA Commission] shall endeavour to agree on an appropriate response as expeditiously as possible.
2. The Party in whose territory the court or administrative body is located shall submit any agreed interpretation of the [CETA Commission] to the court or administrative body in accordance with the rules of that forum.
3. If the [CETA Commission] is unable to agree, a Party may submit its own views to the court or administrative body in accordance with the rules of that forum.]



**ARTICLE 14.15: PRIVATE RIGHTS**

1. [No Party may provide for a right of action under its domestic law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.]
2. [EC: Nothing in this Agreement shall be construed as conferring rights or imposing obligations on persons other than those created between the Parties under public international law, nor as permitting this Agreement to be directly invoked in the domestic legal systems of the Parties.]

[EC: suggested additional provisions:

1. mediation at discretion of complaining Party [EC will send]
2. suspension of proceedings. ok
3. retaliation not to mean a violation of WTO Agreement ok
4. Parties may modify time lines ok
5. Best efforts by panel and Parties to expedite procedures in urgent matters] ok

[EC proposal:

Article 14.10 *bis*

This Chapter may be invoked in respect of measures affecting the observance of this Agreement taken at a level of government other than the central level. When [a panel] has ruled that any such measure is inconsistent with this Agreement [as set out in Article X], the Party complained against shall take all necessary measures to ensure that the measure at issue is brought into compliance with the provisions of this Agreement. The provisions of this Chapter relating to compensation and suspension of concessions or other obligations [reference] apply in cases where it has not been possible to secure such compliance.]

[EC proposal on suspension of proceedings

The arbitration panel shall, at the request of both Parties, suspend its work at any time for a period agreed by the Parties not exceeding 12 months and shall resume its work at the end of this agreed period at the request of the complaining Party. If the complaining Party does not request the resumption of the arbitration panel's work before the expiry of the agreed suspension period, the procedure shall be terminated. The suspension and termination of the arbitration panel's work are without prejudice to the rights of either Party in another proceeding on the same matter.]

[EC proposal on mutually agreed solutions

The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time. They shall notify the [institutional body] and the arbitration panel of any such solution. Upon notification of the mutually agreed solution, the arbitration panel shall terminate its work and the procedure shall be terminated.]

**IEC PROPOSAL: RULES OF PROCEDURES AND CODE OF CONDUCT****ANNEX I****RULES OF PROCEDURE  
FOR ARBITRATION****GENERAL PROVISIONS**

1. In [Chapter X (Dispute Settlement)] and under these rules:

“adviser” means a person retained by a Party to advise or assist that Party in connection with the arbitration panel proceeding;

“member” or “arbitrator” means a member of an arbitration panel established under Article 5 of [Chapter X (Dispute Settlement)];

“assistant” means a person who, under the terms of appointment of an arbitrator conducts research or provides assistance to the member;

“complaining Party” means any Party that requests the establishment of an arbitration panel under Article 5 of [Chapter X (Dispute Settlement)];

“Party complained against” means the Party that is alleged to be in violation of the provisions referred to in Article 2 of [Chapter X (Dispute Settlement)];

“arbitration panel” means a panel established under Article 6 of [Chapter X (Dispute Settlement)];

“representative of a Party” means an employee or any person appointed by a government department or agency or any other public entity of a Party who represents the Party for the purposes of a dispute under this Agreement;

“day” means a calendar day, unless otherwise specified.

2. The Party complained against shall be in charge of the logistical administration of dispute settlement proceedings, in particular the organisation of hearings, unless otherwise agreed. However, both Parties shall share the expenses derived from organizational matters, including the expenses of the arbitrators.

**NOTIFICATIONS**

3. The Parties and the arbitration panel shall transmit any request, notice, written submission or other document by e-mail, with a copy submitted on the same day by facsimile transmission, registered post, courier, delivery against receipt or any other means of telecommunication that provides a record of the sending thereof. Unless proven otherwise, an e-mail message shall be deemed to be received on the same date of its sending.
4. A Party shall provide an electronic copy of each of its written submissions to the other Party and to each of the arbitrators. A paper copy of the document shall also be provided.

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5. Before the entry into force of this Agreement, the Parties shall inform each other of the designated point of contact for all notifications.
6. Minor errors of a clerical nature in any request, notice, written submission or other document related to the arbitration panel proceeding may be corrected by delivery of a new document clearly indicating the changes.
7. If the last day for delivery of a document falls on an official holiday or rest day in Canada or in the Community, the document may be delivered on the next business day. The Parties shall exchange a list of dates of their official holidays and rest days on the first Monday of every December for the following year. No documents, notifications or requests of any kind shall be deemed to be received on an official holiday or rest day.
8. Depending on the object of the provisions under dispute, all requests and notifications addressed to the [institutional body to be defined] in accordance with [Chapter X (Dispute Settlement)] shall also be copied to the other relevant [institutional bodies].

### COMMENCING THE ARBITRATION

9. (a) If pursuant to Article 6 of [Chapter X (Dispute Settlement)] or to rules 20, 21 or 50 of these Rules of Procedure, the members of the arbitration panel are selected by lot, representatives of both Parties are entitled to be present when lots are drawn.  
  
(b) Unless the Parties agree otherwise, they shall meet the arbitration panel within seven working days of its establishment in order to determine such matters that the Parties or the arbitration panel deem appropriate, including the remuneration and expenses to be paid to the arbitrators, which will be in accordance with WTO standards. Members of the arbitration panel and representatives of the Parties may take part in this meeting via telephone or video conference.
10. (a) Unless the Parties agree otherwise, within five working days of the date of the selection of the arbitrators, the terms of reference of the arbitration panel shall be:  
  
*“to examine, in the light of the relevant provisions of the Agreement, the matter referred to in the request for establishment of the arbitration panel, to rule on the compatibility of the measure in question with the provisions referred to in Article 2 of [Chapter X (Dispute Settlement)] and to make a ruling in accordance with Article 8 of [Chapter X (Dispute Settlement)] on Dispute Settlement.”*  
  
(b) The Parties must notify the agreed terms of reference to the arbitration panel within three working days of their agreement.

### INITIAL SUBMISSIONS

11. The complaining Party shall deliver its initial written submission no later than [20] days after the date of establishment of the arbitration panel. The Party complained against shall deliver its written counter-submission no later than [20] days after the date of delivery of the initial written submission.

## WORKING OF ARBITRATION PANELS

12. The chairperson of the arbitration panel shall preside at all its meetings. An arbitration panel may delegate to the chairperson authority to make administrative and procedural decisions.
13. Unless otherwise provided in [Chapter X (Dispute Settlement)] and without prejudice to paragraph 27, the arbitration panel may conduct its activities by any means, including telephone, facsimile transmissions or computer links.
14. Only arbitrators may take part in the deliberations of the arbitration panel, but the arbitration panel may permit its assistants to be present at its deliberations.
15. The drafting of any ruling shall remain the exclusive responsibility of the arbitration panel and must not be delegated.
16. Where a procedural question arises that is not covered by the provisions of [Chapter X (Dispute Settlement)] and its annexes, the arbitration panel, after consulting the Parties, may adopt an appropriate procedure that is compatible with those provisions and that ensures equal treatment between the Parties.
17. When the arbitration panel considers that there is a need to modify any time-limit applicable in the proceedings or to make any other procedural or administrative adjustment, it shall inform the Parties in writing of the reasons for the modification or adjustment and of the period or adjustment needed. The arbitration panel may adopt such modification or adjustment after having consulted the Parties. The time-limits of Article 8(2) of [Chapter X (Dispute Settlement)] shall not be modified.

## REPLACEMENT

18. If an arbitrator is unable to participate in the proceeding, withdraws, or must be replaced, a replacement shall be selected in accordance with Article 6 paragraph 3 of [Chapter X (Dispute Settlement)].
19. Where a Party considers that an arbitrator does not comply with the requirements of the Code of Conduct and for this reason must be replaced, that Party shall notify the other Party within 15 days from the time at which it came to know of the circumstances underlying the arbitrator's material violation of the Code of Conduct.
20. Where a Party considers that an arbitrator other than the chairperson does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, replace the arbitrator and select a replacement following the procedure set out in Article 6 paragraph 3 of [Chapter X (Dispute Settlement)].

If the Parties fail to agree on the need to replace an arbitrator, any Party may request that such matter be referred to the chairperson of the arbitration panel, whose decision shall be final.

If, pursuant to such a request, the chairperson finds that an arbitrator does not comply with the requirements of the Code of Conduct, she or he shall draw a new arbitrator

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by lot from the names on the list referred to in Article X(1) of [Chapter X (Dispute Settlement)] and on which the original arbitrator was included. If the original arbitrator was chosen by the Parties pursuant to Article 6 of [Chapter X (Dispute Settlement)], the replacement shall be drawn by lot from the individuals proposed by the complaining Party and by the Party complained against under Article X(1) of this Protocol. The selection of the new arbitrator shall be made within five working days of the date of the submission of the request to the chairperson of the arbitration panel.

21. Where a Party considers that the chairperson of the arbitration panel does not comply with the requirements of the Code of Conduct, the Parties shall consult and, if they so agree, shall dismiss the chairperson and select a replacement following the procedure set out in Article 6 paragraph 3 of [Chapter X (Dispute Settlement)].

If the Parties fail to agree on the need to replace the chairperson, any Party may request that such matter be referred to one of the remaining members of the list of individuals selected to act as chairperson under Article 19 paragraph 1 of [Chapter X (Dispute Settlement)]. Her or his name shall be drawn by lot by the chair of the [institutional body to be defined], or the chair's delegate. The decision by this person on the need to replace the chairperson shall be final.

If this person decides that the original chairperson does not comply with the requirements of the Code of Conduct, she or he shall draw a new chairperson by lot among the remaining names on the list referred to in Article 19(1) of this Protocol to act as chairperson. The selection of the new chairperson shall be made within five working days of the date of the submission of the request referred to in this paragraph.

22. The arbitration panel proceedings shall be suspended for the period taken to carry out the procedures provided for in rules 18, 19, 20 and 21.

## HEARINGS

23. The chairperson shall fix the date and time of the hearing in consultation with the Parties and the other members of the arbitration panel, and confirm this in writing to the Parties. This information shall also be made publicly available by the Party in charge of the logistical administration of the proceedings if the hearing is open to the public. Unless a Party disagrees, the arbitration panel may decide not to convene a hearing.
24. Unless the Parties agree otherwise, the hearing shall be held in Brussels if the complaining Party is Canada and in [...] if the complaining Party is the Community.
25. The arbitration panel may convene one additional hearing only in exceptional circumstances. No additional hearing shall be convened for the procedures established under Article 10(2), 11(2), 12(3) and 13(2) of [Chapter X (Dispute Settlement)].
26. All arbitrators shall be present during the entirety of any hearings.

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27. The following persons may attend the hearing, irrespective of whether the proceedings are open to the public or not:

- (a) representatives of the Parties;
- (b) advisers to the Parties;
- (c) administrative staff, interpreters, translators and court reporters; and
- (d) arbitrators' assistants.

Only the representatives and advisers of the Parties may address the arbitration panel.

28. No later than five working days before the date of a hearing, each Party shall deliver to the arbitration panel a list of the names of persons who will make oral arguments or presentations at the hearing on behalf of that Party and of other representatives or advisers who will be attending the hearing.
29. The hearings of the arbitration panels shall be open to the public, unless the Parties decide otherwise. If the Parties decide that the hearing is closed to the public, part of the hearing may, however, be open to the public if the arbitration panel, on application by the Parties, so decides. However the arbitration panel shall meet in closed session when the submission and arguments of a Party contain confidential business information.
30. The arbitration panel shall conduct the hearing in the following manner, ensuring that the complaining Party and the Party complained against are afforded equal time:

### *Argument*

- (a) argument of the complaining Party
- (b) argument of the Party complained against

### *Rebuttal Argument*

- (a) argument of the complaining Party
- (b) counter-reply of the Party complained against

31. The arbitration panel may direct questions to either Party at any time during the hearing.
32. The arbitration panel shall arrange for a transcript of each hearing to be prepared and delivered as soon as possible to the Parties.
33. Each Party may deliver a supplementary written submission concerning any matter that arose during the hearing within 10 working days of the date of the hearing.

## QUESTIONS IN WRITING

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34. The arbitration panel may at any time during the proceedings address questions in writing to one or both Parties. Each of the Parties shall receive a copy of any questions put by the arbitration panel.
35. Each Party shall also provide the other Party with a copy of its written response to the questions of the arbitration panel. Each Party shall be given the opportunity to provide written comments on the other Party's reply within five working days of the date of receipt.

## CONFIDENTIALITY

36. The Parties shall maintain the confidentiality of the arbitration panel hearings where the hearings are held in closed session, in accordance with rule 29. Each Party and its advisers shall treat as confidential any information submitted by the other Party to the arbitration panel which that Party has designated as confidential. Where a Party submits a confidential version of its written submissions to the arbitration panel, it shall also, upon request of the other Party, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public. That summary shall be notified no later than 15 days after the date of either the request or the submission, whichever is later. Nothing in these rules shall preclude a Party from disclosing statements of its own positions to the public to the extent that they do not contain confidential information.

## EX PARTE CONTACTS

37. The arbitration panel shall not meet or contact a Party in the absence of the other Party.
38. No member of the arbitration panel may discuss any aspect of the subject matter of the proceedings with one Party or both Parties in the absence of the other arbitrators.

## AMICUS CURIAE SUBMISSIONS

39. Unless the Parties agree otherwise within five days of the date of the establishment of the arbitration panel, the arbitration panel may receive unsolicited written submissions, provided that they are made within 10 days of the date of the [establishment] of the arbitration panel, that they are concise and in no case longer than 15 typed pages, including any annexes, and that they are directly relevant to the issue under consideration by the arbitration panel.
40. The submission shall contain a description of the person making the submission, whether natural or legal, including the nature of that person's activities and the source of that person's financing, and specify the nature of the interest that that person has in the arbitration proceeding. It shall be drafted in the languages chosen by the Parties in accordance with Rules 43 and 44 of these Rules of Procedure.
41. The arbitration panel shall list in its ruling all the submissions it has received that conform to the above rules. The arbitration panel shall not be obliged to address in its



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ruling the arguments made in such submissions. Any submission obtained by the arbitration panel under this rule shall be submitted to the Parties for their comments.

### URGENT CASES

42. In cases of urgency referred to in [Chapter X (Dispute Settlement)], the arbitration panel, after consulting the Parties, shall adjust the time limits referred to in these rules as appropriate and shall notify the Parties of such adjustments.

### TRANSLATION AND INTERPRETATION

43. During the consultations referred to in Article 6.2 of [Chapter X (Dispute Settlement)], and no later than the meeting referred to in Rule 9(b) of these Rules of Procedure, the Parties shall endeavour to agree on a common working language for the proceedings before the arbitration panel.
44. If the Parties are unable to agree on a common working language, each Party shall arrange for and bear the costs of the translation of its written submissions into the language chosen by the other Party. The Party complained against shall arrange for the interpretation of oral submissions into the languages chosen by the Parties.
45. Arbitration panel rulings shall be notified in the language or languages chosen by the Parties.
46. Any costs incurred for translation of an arbitration ruling into the language or languages chose by the Parties shall be borne equally by the Parties.
47. Any Party may provide comments on any translated version of a document drawn up in accordance with these rules.

### CALCULATION OF TIME-LIMITS

48. Where, by reason of the application of rule 7 of these Rules of Procedure, a Party receives a document on a date other than the date on which this document is received by the other Party, any period of time that is calculated on the basis of the date of receipt of that document shall be calculated from the last date of receipt of that document.

### OTHER PROCEDURES

49. These Rules of Procedure are also applicable to procedures established under Article 10(2), 11(2), 12(3) and 13(2) of [Chapter X (Dispute Settlement)]. However, the time-limits laid down in these Rules of Procedure shall be adjusted in line with the special time-limits provided for the adoption of a ruling by the arbitration panel in those other procedures.
50. In the event of the original panel, or some of its members, being unable to reconvene for the procedures established under Article 10(2), 11(2), 12(3) and 13(2) of [Chapter X (Dispute Settlement)], the procedures set out in Article 6 of this Title shall apply. The time limit for the notification of the ruling shall be extended by 15 days.

**ANNEX II****CODE OF CONDUCT FOR MEMBERS OF ARBITRATION PANELS AND MEDIATORS  
DEFINITIONS****1. In this Code of Conduct:**

(a) "member" or "arbitrator" means a member of an arbitration panel effectively established under Article 6 of [Chapter X (Dispute Settlement)];

[(b) "mediator" means a person who conducts a mediation in accordance with Article 4 of [Chapter X (Dispute Settlement)];]

(c) "candidate" means an individual whose name is on the list of arbitrators referred to in Article 19 of [Chapter X (Dispute Settlement)] and who is under consideration for selection as a member of an arbitration panel under Article 6 of [Chapter X (Dispute Settlement)];

(d) "assistant" means a person who, under the terms of appointment of a member, conducts, researches or provides assistance to the member;

(e) "proceeding", unless otherwise specified, means an arbitration panel proceeding under [Chapter X (Dispute Settlement)];

(f) "staff", in respect of a member, means persons under the direction and control of the member, other than assistants.

**RESPONSIBILITIES TO THE PROCESS**

2. Every candidate and member shall avoid impropriety and the appearance of impropriety, shall be independent and impartial, shall avoid direct and indirect conflicts of interests and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement mechanism is preserved. Former members must comply with the obligations established in paragraphs 15, 16, 17 and 18 of this Code of Conduct.

**DISCLOSURE OBLIGATIONS**

3. Prior to confirmation of her or his selection as a member of the arbitration panel under [Chapter X (Dispute Settlement)], a candidate shall disclose any interest, relationship or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or bias in the proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interests, relationships and matters.
4. A candidate or member shall only communicate matters concerning actual or potential violations of this Code of Conduct to the [institutional body to be defined] for consideration by the Parties.
5. Once selected, a member shall continue to make all reasonable efforts to become aware of any interests, relationships or matters referred to in paragraph 3 of this Code of Conduct and shall disclose them. The disclosure obligation is a continuing duty which requires a member to disclose any such interests, relationships or matters that may arise during any stage of the proceeding. The member shall disclose such

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interests, relationships or matters by informing the [institutional body to be defined], in writing, for consideration by the Parties.

### DUTIES OF MEMBERS

6. Upon selection a member shall perform her or his duties thoroughly and expeditiously throughout the course of the proceeding, and with fairness and diligence.
7. A member shall consider only those issues raised in the proceeding and necessary for a ruling and shall not delegate this duty to any other person.
8. A member shall take all appropriate steps to ensure that his or her assistant and staff are aware of, and comply with, paragraphs 2, 3, 4, 5, 16, 17 and 18 of this Code of Conduct.
9. A member shall not engage in ex parte contacts concerning the proceeding.

### INDEPENDENCE AND IMPARTIALITY OF MEMBERS

10. A member must be independent and impartial and avoid creating an appearance of impropriety or bias and shall not be influenced by self-interest, outside pressure, political considerations, public clamour, and loyalty to a Party or fear of criticism.
11. A member shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of her or his duties.
12. A member may not use her or his position on the arbitration panel to advance any personal or private interests and shall avoid actions that may create the impression that others are in a special position to influence her or him.
13. A member may not allow financial, business, professional, family or social relationships or responsibilities to influence her or his conduct or judgement.
14. A member must avoid entering into any relationship or acquiring any financial interest that is likely to affect her or his impartiality or that might reasonably create an appearance of impropriety or bias.

### OBLIGATIONS OF FORMER MEMBERS

15. All former members must avoid actions that may create the appearance that they were biased in carrying out their duties or derived advantage from the decision or ruling of the arbitration panel.

### CONFIDENTIALITY

16. No member or former member shall at any time disclose or use any non-public information concerning a proceeding or acquired during a proceeding except for the purposes of that proceeding and shall not, in any case, disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interest of others.
17. A member shall not disclose an arbitration panel ruling or parts thereof prior to its publication in accordance with [Chapter X (Dispute Settlement)].

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18. A member or former member shall not at any time disclose the deliberations of an arbitration panel, or any member's view.

**EXPENSES**

19. Each member shall keep a record and render a final account of the time devoted to the procedure and of her or his expenses.

**[MEDIATORS]**

20. [The disciplines described in this Code of Conduct as applying to members or former members shall apply, *mutatis mutandis*, to mediators.]

]

## CHAPTER [XX]

## Institutional, General and Final Provisions

## EXCEPTIONS

[EU comment: Exceptions and related definitions to be discussed in relevant negotiating groups. Placement in the text of the agreement (within the relevant chapters and/or as a separate chapter) to be decided at a later stage]

**Article X.01: Definitions**

For purposes of this Chapter:

**competition authority** means:

- (a) for Canada, the Commissioner of Competition or a successor notified to the other party through the Coordinators; and
- (b) [for the European Union, the Commission of the European Union as to its responsibilities pursuant to the competition laws of the European Union.]

**designated authority** means:

- (a) in the case of Canada, the Assistant Deputy Minister for Tax Policy, Department of Finance, or a successor authority notified to the other party through the Coordinators; and
- (b) [in the case of the EC – to be discussed under the article on taxation]

**information protected under its competition laws** means:

- (a) for Canada, information within the scope of Section 29 of the *Competition Act*, R.S. 1985, c.34, or a successor provision; and
- (b) [for the European Union this means information within the scope of Article 28 of Council Regulation (EC) No. 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, or Article 17 of Council Regulation No 139/2004 on the control of concentrations between undertakings]

**[person engaged in a cultural industry** means a person engaged in the following activities:

- (a) the publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine-readable form, except when printing or typesetting any of the foregoing is the only activity;

- (b) the production, distribution, sale or exhibition of film or video recordings;
- (a) the production, distribution, sale or exhibition of audio or video music recordings;
- (a) the publication, distribution or sale of music in print or machine-readable form; or
- (a) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services.] [EC comment: linked to discussions on cultural exception]

**[tax convention]** means a convention for the avoidance of double taxation or other international taxation agreement or arrangement; and

**tax** and **taxation measure** does not include:

- (a) a “customs duty, or
- (b) a measure listed in exceptions (b), (c), or (d) in the definition of “customs duty” in Article 1.01 (Initial Provisions and General Definitions – Definitions of General Application).] [EC comment: linked to discussions on taxation article]

#### **[Article X.02: General Exceptions**

1. [For the purposes of Chapters X through Y and Chapter Z (National Treatment and Market Access for Goods, Rules of Origin, Customs Procedures, Trade Facilitation, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Emergency Action and Electronic Commerce) and Annex X (International Maritime Section), GATT 1994 Article XX is incorporated into and made part of this Agreement. The Parties understand that the measures referred to in GATT 1994 Article XX (b) include environmental measures necessary to protect human, animal or plant life or health. The Parties further understand that GATT 1994 Article XX (g) applies to measures for the conservation of living and non-living exhaustible natural resources.][EC comment: for discussion in groups dealing with trade in goods and sustainable development]

[2. For the purposes of Chapters X, Y, and Z (Cross-Border Trade in Services, Telecommunications, Temporary Entry for Business Persons, and Electronic Commerce) GATS Article XIV (a), (b) and (c) is incorporated into this Agreement. The Parties

understand that the measures referred to in GATS Article XIV (b) include environmental measures necessary to protect human, animal or plant life or health.

3. For the purposes of Chapter X (Investment):

- (a) a Party may adopt or enforce a measure necessary:
  - (i) to protect human, animal or plant life or health, which the Parties understand to include environmental measures necessary to protect human, animal or plant life or health,
  - (ii) to ensure compliance with domestic law that is not inconsistent with this Agreement, or
  - (iii) for the conservation of living or non-living exhaustible natural resources;
- (b) provided that the measure referred to in sub paragraph (a) is not:
  - (i) applied in a manner that constitutes arbitrary or unjustifiable discrimination between investments or between investors, or
  - (ii) a disguised restriction on international trade or investment.] [EC comment: for discussion in groups dealing with services, investment, and sustainable development]

#### **Article X.03: National Security**

This Agreement does not:

- (a) require a Party to furnish or allow access to information if that Party determines that the disclosure of this information would be contrary to its essential security interests;
- (b) prevent a Party from taking an action that it considers necessary to protect its essential security interests:
  - (i) [relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment;][EC: under internal consultation]
  - (ii) taken in time of war or other emergency in international relations; or
  - (iii) [relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or

other nuclear explosive devices; or][EC: relating to fissionable and fusionable materials or the materials from which they are derived; or]

- (c) [prevent a Party from fulfilling its obligations under the *United Nations Charter* for the maintenance of international peace and security.] [EC: to prevent a Party from taking any action in order to carry out its international obligations for the purpose of maintaining international peace and security.]

#### [Article X.04: Taxation

1. Except as set out in this Article, this Agreement does not apply to a taxation measure.
2. This Agreement does not affect the rights and obligations of a Party under a tax convention. In the event of inconsistency between this Agreement and a tax convention, that convention prevails.
3. Where a provision with respect to a taxation measure under this Agreement is similar to a provision under a tax convention, the competent authorities identified in the tax convention shall use the procedural provisions of that tax convention to resolve an issue that may arise under this Agreement.
4. Notwithstanding paragraphs 2 and 3:
  - (a) Article X (National Treatment and Market Access for Goods – National Treatment) and the provisions of this Agreement necessary to give effect to that Article apply to a taxation measure to the same extent as Article III of the GATT 1994, and,
  - (b) Article X (National Treatment and Market Access for Goods – Export Taxes) applies to a taxation measure.
5. Subject to paragraphs 2, 3 and 6:
  - (a) Article X (Cross-Border Trade in Services – National Treatment) and Article X (Financial Services – National Treatment) apply to a taxation measure on income, capital gains or on the taxable capital of corporations that relate to the purchase or consumption of a particular service, and
  - (b) Articles X and Y (Investment – National Treatment and Most-Favoured-Nation Treatment), Articles X and Y (Cross-Border Trade in Services – National Treatment and Most-Favoured-Nation Treatment) and Articles X and Y (Financial Services – National Treatment and Most-Favoured-Nation Treatment) apply to a taxation measure, other than one on income, capital gains or on the taxable capital of corporations.
6. Paragraph 5 does not:
  - (a) impose a most-favoured-nation obligation with respect to an advantage accorded by a Party pursuant to a tax convention;



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- (b) impose on a Party an obligation making the receipt, or continued receipt, of an advantage relating to the contributions to, or income of, pension trusts or pension plans conditional on a requirement that the Party maintain continuous jurisdiction over the pension trust or pension plan;
- (c) impose on a Party an obligation making the receipt, or continued receipt, of an advantage relating to the purchase or consumption of a particular service conditional on a requirement that the service be provided in its territory;
- (d) apply to a non-conforming provision of an existing taxation measure;
- (e) apply to the continuation or prompt renewal of a non-conforming provision of an existing taxation measure;
- (f) apply to an amendment to a non-conforming provision of an existing taxation measure provided that the amendment does not decrease its conformity, as it existed immediately before the amendment, with the Articles referred to in paragraph 5; or
- (g) apply to a new taxation measure that is aimed at ensuring the equitable and effective imposition or collection of taxes (including, for greater certainty, a measure that is taken by a Party in order to ensure compliance with the Party's taxation system or to prevent the avoidance or evasion of taxes) and that does not arbitrarily discriminate between persons, goods or services of the Parties.

7. Subject to paragraphs 2 and 3, and without prejudice to the rights and obligations of the Parties under paragraph 4, Article X (Investment – Performance Requirements) applies to a taxation measure.

8. Notwithstanding paragraphs 2 and 3, Article 9X (Investment – Expropriation) applies to a taxation measure, but an investor may not invoke that Article as the basis for a claim under Articles X (Investment – Claim by an Investor of a Party on Its Own Behalf) or X (Investment – Claim by an Investor of a Party on Behalf of an Enterprise), where the designated authorities of the Parties have determined under this paragraph that a taxation measure is not an expropriation. The investor shall refer the issue of whether a measure is not an expropriation for a determination to the designated authorities of the Parties at the time that it gives notice under subparagraph X(X) of Article X (Investment – Conditions Precedent to Submission of a Claim to Arbitration). If, within a period of six months from the date of this referral, the designated authorities do not agree to consider the issue or, having agreed to consider it, fail to agree that the measure is not an expropriation, the investor may submit its claim to arbitration under Article X (Investment – Submission of a Claim to Arbitration).

9. In order to give effect to paragraphs 1 to 3:

- (a) If an issue arises as to whether a measure of a Party is a taxation measure in a dispute between the Parties, either Party may refer the issue to the designated authorities of the Parties. The designated authorities shall decide the issue of whether the measure is a taxation measure, and their decision shall bind a panel established under Article X (Dispute Settlement – Establishment of a Panel) for the dispute. If a Party has referred the issue to the designated

authorities and they have not decided the issue within six months of the referral, the panel shall decide the issue.

- (b) If an issue arises as to whether a measure is a taxation measure in connection with a claim by an investor of a Party, the Party that has received notice of intention to submit a claim or against which an investor of a Party has submitted a claim may refer the issue to the designated authorities of the Parties. The designated authorities shall decide whether the measure is a taxation measure, and their decision shall bind a Tribunal with jurisdiction over the claim. A Tribunal seized of a claim in which the same issue arises may not proceed while the designated authorities are considering the issue. If a Party has referred the issue to the designated authorities and they have not decided the issue within six months of the referral, the Tribunal shall decide the issue.
- (c) If an issue arises as to whether a tax convention prevails over this Agreement in a dispute between the Parties, a Party to the dispute may refer the issue to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention prevails. If within six months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention prevails, procedures concerning that measure may not be initiated under Article X (Dispute Settlement – Establishment of a Panel). Procedures concerning the measure may not be initiated while the designated authorities are considering the issue. If a Party has referred the issue to the designated authorities and they have not decided the issue within six months of the referral, the panel shall decide the issue.
- (d) If an issue arises as to whether a tax convention prevails over this Agreement prior to the submission of a claim by an investor of a Party, the Party that has received notice of intention to submit a claim may refer the issue to the designated authorities of the Parties. The designated authorities shall consider the issue and decide whether the tax convention prevails. If within six months of the referral of the issue to the designated authorities, they decide with respect to the measure that gives rise to the issue that the tax convention prevails, a claim concerning that measure may not be submitted under Article X (Investment – Submission of a Claim to Arbitration). A claim concerning the measure may not be submitted while the designated authorities are considering the issue. An investor of a Party that fails to identify a taxation measure in its notice of intention to submit a claim may not submit a claim concerning that measure under Article X (Investment – Submission of a Claim to Arbitration). If a Party has referred the issue to the designated authorities and they have not decided the issue within six months of the referral, the panel shall decide the issue.

10. If an investor invokes Article X (Investment – Expropriation) as the basis for a claim under Article X (Investment – Claim by an Investor of a Party on Its Own Behalf) or X (Investment – Claim by an Investor of a Party on Behalf of an Enterprise), the designated authorities shall make a determination under paragraph 8 of whether a measure is an

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expropriation concurrently with a decision under paragraph 10(b) of whether the measure is a taxation measure.

11. The designated authorities seized of an issue under paragraphs 8, 9 or 10 may modify the time period allowed to decide the issue.

12. This Agreement does not require a Party to furnish or allow access to information whose disclosure would be contrary to that Party's law protecting information concerning the taxation affairs of a taxpayer.] [EC comment: for discussion between leads on taxation]

**Article X.05: Disclosure of Information**

- [1. This Agreement does not require a Party to furnish or allow access to information which if disclosed would impede law enforcement, or would be contrary to the Party's law protecting the deliberative and policy-making processes of the executive branch of government at the cabinet level, personal privacy or the financial affairs and accounts of individual customers of financial institutions.][EC comment: can Canada further explain the need for this exception, in particular on bank secrecy?]
2. In the course of a dispute settlement procedure under this Agreement:
- (a) a Party is not required to furnish or allow access to information protected under its competition laws;
  - (b) a competition authority of a Party is not required to furnish or allow access to information that is privileged or otherwise protected from disclosure.

**[Article X.06: Cultural Industries ]**

[This Agreement does not apply to a measure adopted or maintained by a Party with respect to a person engaged in a cultural industry except as specifically provided in Article X (National Treatment and Market Access for Goods – Tariff Elimination).] [EC comment: this exception seems very broad. We understand it as allowing for example IPR infringement, discrimination or complete import or sales ban of foreign cultural products. Is this the intention? In any event, the clause should explicitly state that it is without prejudice to the parties' rights and obligations under the WTO]

**Article X.07: World Trade Organization Waivers**

[If a right or obligation in this Agreement duplicates one under the WTO Agreement, the Parties agree that a measure adopted by a Party in conformity with a waiver decision adopted by the WTO pursuant to Article IX of the WTO Agreement is deemed to be also in conformity with the present Agreement. [ Such conforming measure of either Party may not give rise to a claim by an investor of one Party against the other under Section B of Chapter Nine (Settlement of Disputes between an Investor and the Host Party).] ]

EC comment: subject to analysis of Canada's waivers.

Our existing waivers are WT/L/722 (Moldova, until 2013) and WT/L/654 (Western Balkans, until 2011). They are available at these links

<http://docsonline.wto.org/DDFDocuments/t/WT/L/722.doc> and  
<http://docsonline.wto.org/DDFDocuments/t/WT/L/654.doc>

We also use the Kimberly waiver WT/L/518  
<http://docsonline.wto.org/DDFDocuments/t/WT/L/518.doc>

**FINAL PROVISIONS****Article X.01: Annexes, Appendices and Footnotes**

The Annexes, Appendices and footnotes to this Agreement constitute integral parts of this Agreement. [EC: is used, add also "Protocols"]

**Article X.02: Amendments**

1. [The Agreement may be amended in writing by mutual consent of the Parties][EC: by means of a decision of the [institutional body]. The Parties may adopt the decision subject to their respective applicable legal requirements and procedures].
2. [An amendment enters into force following an exchange of written notifications by the Parties certifying the completion of their respective necessary legal procedures. The amendment enters into force on the date agreed upon by the Parties].[ EC comment: entry into force could be regulated in the decision referred above].

**Article X.03: Reservations**

A Party may not make unilateral reservations or unilateral interpretive declarations to this Agreement. [EC comment: we need to discuss this further, in our practice we often have statements or declarations attached to the Council decision on the signature (but not attached to the text of the Agreement itself)]

**Article X.04: Entry into Force**

Each Party shall notify the other Party in writing of the completion of its legal or constitutional procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the first day of the second month following the latter notification of the completion of the procedures for the entry into force. [EC: provisional application, if applicable, could also be addressed in this article]

**Article X.05: Termination**

This Agreement shall be valid for an unlimited period. This Agreement may be terminated by either Party by giving notice in writing. It shall cease to be in force 6 months after the date of receipt of that notice.

**Article X.06: Accession**

[A third State or group of States may accede to this Agreement through an accession agreement between the Parties and the acceding State or group of States.]

EC: Any new Member State of the EU shall accede to this Agreement from the date of its accession to the EU by means of a clause to that effect in the act of accession. If the act of accession to the EU does not provide for such automatic accession of the EU Member State to this Agreement, the EU Member State concerned shall accede by depositing an act of accession with the [depository]. Any necessary adaptation to this Agreement shall be adopted by the [institutional body] by means of a decision.

**IN WITNESS WHEREOF**, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

**DONE** in duplicate at \_\_\_\_\_, this \_\_\_\_\_ day of 2009 in the Bulgarian, Czech, Danish, Dutch, French German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, and Swedish languages, each version being equally authentic.

\_\_\_\_\_  
For Canada

\_\_\_\_\_  
For the EU